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## The Moral Politics of Social Control: Political Culture and Ordinary Crime in Cuba

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# THE MORAL POLITICS OF SOCIAL CONTROL: POLITICAL CULTURE AND ORDINARY CRIME IN CUBA

*Deborah M. Weissman & Marsha Weissman\**

[Y]our ideals are too high . . . . An idea that is so high that it is beyond reach of the real is not very useful . . . . What you need here among the Cubans is a desire to make money, to found great enterprises, and to carry on the prosperity of this beautiful island, and the young Cubans ought, most of them, to begin in business . . . . The right of property and the motive for accumulation, next to the right of liberty, is the basis of all modern, successful civilization, and until you have a community of political influence and control which is affected by the conserving influences of property and property ownership, successful popular government is impossible.<sup>1</sup>

[T]he moral factors, the factors of conscience, the cultural factors are irreplaceable under socialism. We should not think, even for a minute, that we are going to solve with money those problems that only the conscience can resolve. What we should do is use material incentives intelligently and combine them with moral stimuli, use them as reinforcers. We should not believe for an instant that now we can manage today's man, the socialist man, by virtue of material incentives exclusively, because material incentives do not have the attraction here that they have under capitalism where everything depends—life and death—upon the money in one's pocket.<sup>2</sup>

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1. William Howard Taft, Provisional Governor of Cuba, Address at the Opening Exercises of the National University of Habana (Oct. 1, 1906).

2. Fidel Castro, Cuban Prime Minister, Address at the Closing Ceremony of the 13th Congress of the Central Organization of Cuban Workers (Nov. 16, 1973).

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## INTRODUCTION

The Cuban revolution has been described as “the longest running social experiment” in history—one not well-received in the United States.<sup>3</sup> The U.S. government responded to the revolution first with suspicion and then with hostility. Initially, the United States was most concerned by the close geographical proximity of a Soviet Union-allied socialist government, as well as the possibility of Cuban influence in Latin America. In the post-Cold War years, journalists and pundits focused their commentary on Cuba’s lack of democratic political institutions, human rights violations, and a pathological obsession with the Castro brothers.<sup>4</sup> Even though the current administration has acknowledged the failure of U.S. policy with respect to Cuba, no substantive changes have been announced.<sup>5</sup> As a result, the narrative of Cuba in the United States continues to dwell almost exclusively on political repression and economic failure.<sup>6</sup>

The Cuban revolution, however, is a complex process—one that defies facile explanations. Subscribing to the perspective offered by social scientists who urge “a more nuanced view” of Cuba,<sup>7</sup> we undertake an examination of a specific facet of the Cuban revolution in this Article: the Cuban approach to ordinary crime. While other scholars have addressed Cuba’s criminal justice system by focusing on formal legal substance, procedural matters, and socialist legality, this Article provides an alternative opportunity to examine commonly held views about socialist governance.<sup>8</sup> Perhaps more importantly, it provides insights into the

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3. The Cuba Studies Trust, International Institute for the Study of Cuba, <http://www.cubastudiustrust.org/plan.html> (last visited Feb. 11, 2010).

4. See Saul Landau, *U.S. Media Images of Postrevolutionary Cuba: Shaped by Government Policy and Commercial Grammar*, *LATIN AM. PERSP.*, July 2006, at 118.

5. On April 13, 2009, the White House announced the easing of some travel and remittance restrictions for Cuban-American families. Press Release, The White House, Office of the Press Secretary, Fact Sheet: Reaching Out to the Cuban People (Apr. 13, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/Fact-Sheet-Reaching-out-to-the-Cuban-people/](http://www.whitehouse.gov/the_press_office/Fact-Sheet-Reaching-out-to-the-Cuban-people/); see also Mark Landler, *Clinton Impresses Foreign Audiences by Saying U.S. Policies Have Failed*, *N.Y. TIMES*, Apr. 18, 2009, at A4.

6. Landau, *supra* note 4, at 122 (critiquing reports that “pose outdated and ethnocentric questions” related to Cuba’s failure to adopt U.S. standards); see also Associated Press, *Cuba: Dispute on Castro’s Intent*, *N.Y. TIMES*, Apr. 23, 2009, at A13 (noting current U.S. demands that Cuba address human rights and political prisoners).

7. Alexander I. Gray & Antoni Kapcia, *Introduction: Responding to Crisis at the Grass Roots*, in *THE CHANGING DYNAMIC OF CUBAN CIVIL SOCIETY* 1, 8 (Alexander I. Gray & Antoni Kapcia eds., 2008).

8. See Gerard J. Clark, *The Legal Profession in Cuba*, 23 *SUFFOLK TRANSNAT’L L. REV.* 413, 436; Erik Luna, *Cuban Criminal Justice and the Ideal of Good Governance*, 14

ways in which political culture and social controls interact to produce a coherent and generally successful policy response to crime. In fact, Cuban methods have resulted in noteworthy developments within a socialist system that has to do as much with traditions of political culture as it does with Marxist ideology. That Cuba has succeeded in reducing reliance on formal penal sanctions and lowered crime rates invites comparison with the United States, where strategies of community controls as an alternative to incarceration have met with less success.<sup>9</sup>

This Article focuses on social controls designed to regulate two types of criminal behavior related to family structures, households, and neighborhoods: domestic violence between intimate partners and juvenile delinquency.<sup>10</sup> These types of complex social deviancies may be categorized as “ordinary crime,” as distinguished from “political crime” or crimes of a political nature.<sup>11</sup> These are contentious terms, of course, the boundaries of which are often difficult to establish within the realm of nation states and in international legal fora.<sup>12</sup> That ordinary crimes may be considered political, and political crimes may be considered ordinary, suggests that these terms are often malleable and lend themselves to easy manipulation.<sup>13</sup> This is as true in Cuba as it is in the United States and elsewhere.<sup>14</sup> Furthermore, many feminist scholars have focused on the

TRANSNAT'L L. & CONTEMP. PROBS. 529, 531, 554 (2004); Erik Luna, *A Place for Comparative Criminal Procedure*, 42 BRANDEIS L.J. 277, 302–03 (2003/2004).

9. Marguerite Rose Jiménez, *The Political Economy of Leisure*, in A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION 146, 147 (Philip Brenner et al. eds., 2008) (noting low crime rates based on a study of the tourism industry). See generally Marsha Weissman, *Aspiring to the Impracticable: Alternatives to Incarceration in the Era of Mass Incarceration*, 33 N.Y.U. REV. L. & SOC. CHANGE 235 (2009).

10. The authors use the term “domestic violence”—a less than ideal term—as opposed to “gender violence” because of this Article’s focus on violence between intimate partners within the family, and to distinguish such violence from violence against women outside of the home or family.

11. Rachel Monaghan & Suzanne McLaughlin, *Informal Justice in the City*, 10 SPACE & POLITY 171, 172 (2006) (noting, for example, the different categories used by paramilitaries in Northern Ireland for purposes of punishment).

12. Marco Roscini, *Great Expectations: The Implementation of the Rome Statute in Italy*, 5 J. INT'L CRIM. JUST. 493, 510 n.55 (2007) (defining political crimes as including ordinary crimes effected for political reasons); Aimée J. Buckland, Comment, *Offending Officials: Former Government Actors and the Political Offense Exception to Extradition*, 94 CAL. L. REV. 423, 441 (2006) (defining “a relative political offense” as “a common crime pursued with a political purpose”).

13. Matthew Hannah, *Torture and the Ticking Bomb: The War on Terrorism as a Geographical Imagination of Power/Knowledge*, 96 ANN. ASSOC. AM. GEOGRAPHERS 622, 626 (2006).

14. José E. Alvarez, *The New Dispute Settlers: (Half) Truths and Consequences*, 38 TEX. INT'L L.J. 405, 437 (2003) (noting U.S. efforts to convince other states to treat cer-

political nature of crimes of domestic violence while scholars of racism have called attention to the political dimensions of youth and crime in the criminal justice system.

With these caveats in mind, this Article examines the participatory networks through which Cubans exercise and experience social control over ordinary crime.<sup>15</sup> Part I examines notions of public morality, the historical antecedents of Cuban political culture, and the relevance of these topics to ordinary crime control—all from a sociolegal perspective—in order to argue that values associated with Cuban liberation processes in the nineteenth century affected the current formation of commonly-shared ideals and the development of social consensus. These nineteenth century values incorporated an ethic based on the proposition of the perfectability of human beings through participation in organizations and civic associations, which provided the rationale for convocation: to make common cause, to share common purpose, and to develop consciousness of solidarity.

Part II reviews Cuban theories of social control, detailing how mass organizations and civil society associations act to influence a culture of citizen responsibility in the realm of crime prevention and how these entities facilitate the exercise of that responsibility. This discussion will demonstrate how organizational processes promote community solidarity and, thus, provide the moral basis for neighborhood involvement in and mitigation of the day-to-day conditions that often contribute to disaffection and deviance.<sup>16</sup>

Next, Part III serves as a case study that demonstrates how a culture of civic responsibility shapes citizens' identifications of, and responses to domestic violence and juvenile delinquency. The effort to achieve gender equality serves as the framework in which Cubans address the problems of violence against women, efforts that cannot be separated from crime control strategies. Similarly, the exalted social status of youth in Cuban culture shapes the approach to juvenile crime. This Part examines both informal and formal legal responses to domestic violence and juvenile delinquency, both of which are shaped by values that eschew criminal sanctions as a useful response.

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tain terrorist acts as ordinary crimes that could be handled in their courts as well as ours); Hannah, *supra* note 13.

15. Our research, as well as that of others who have examined the Cuban criminal justice system, confirms the validity of a working differentiation between ordinary crimes (common crimes that include such offenses as murder, robbery, assault, theft, and those studied here) and political crime (crimes that are perceived to be threats to national security). See sources cited *supra* note 8.

16. See *infra* Part II(B)(2).

Finally, in order to emphasize the significance of political culture as a determinant of social controls, Part IV draws comparisons between crime control measures in Cuba and the United States. While imposition of state sanctions has been the dominant approach to crime in the United States, this discussion will focus on Alternatives to Incarceration (“ATI”)—U.S. community-based initiatives that incorporate many premises and practices similar to Cuban participatory mechanisms of crime control. This is to illustrate that the success of such programs hinges on political culture. In the United States, ATI programs function within the shadow of a carceral state marked by decades of declining social capital. We argue that this backdrop explains why Cuba can rely on community norms to control crime more effectively than the United States.

The fieldwork for this Article was completed over a period of five years (from 2002 to 2007), during which one or both of the authors traveled to Cuba.<sup>17</sup> We met with academics, members of the Ministry of Justice, diplomats, members of prevention commissions, government and private lawyers (including prosecutors and defense attorneys), physicians, nurses, social workers, high school students, members of the Cuban Federation for Women, and members of the Committees for the Defense of the Revolution. We attended meetings and assemblies, visited health clinics and schools, and observed daily life in Havana as well as other parts of Cuba.

#### I. THE DETERMINANTS OF CUBAN SOCIAL CONTROL

The determinants of social control in Cuba have their origins in early nineteenth century philosophies, which were carried forward and deepened with urgency from Cuba’s successive wars for independence from Spain to the revolution of 1959. This Part describes this historical trajectory and the resulting development of a particular political culture steeped in notions of shared social duty and moral obligations and realized through the imperative of collective participation. Civic virtue is expressed through collective endeavors, including efforts toward improving the wellbeing of those whose behavior stands outside norms of respectability. It is this feature of Cuban political culture that informs and influences participatory mechanisms deployed in crime control.

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17. Because of the adverse impact of U.S.-Cuban intergovernmental relations on sociolegal research, we identify, for the most part, the profession, position, or discipline of the persons with whom we met, and the date when and location where we met them. For more on the impact of the U.S.-Cuban relations on scholarly research, see Jorge I. Domínguez, *Revolution and Its Aftermath in Cuba*, 43 *LATIN AM. RES. REV.* 225, 226, 238–39 (2008).

### A. Moralism as Political Culture

Scholars have given justifiable attention to the antecedents of the Cuban revolution as a culmination of a historical process with roots in the nineteenth century. Writing about the larger meaning of the Cuban revolutionary tradition, historian Louis A. Pérez, Jr. observed that “the power of the past [gives] purpose to the present.”<sup>18</sup> This statement serves as a guide to understanding much about contemporary Cuba. The experiences of the wars for independence from Spain in the nineteenth century and the repeated mobilizations against the United States in the twentieth century broadly inform the project of revolution after 1959.

Among the pre-revolutionary ideals that influenced the revolution was the belief in an integrated social order based on virtue, personal transformation, and sacrifice for nation (*patria*).<sup>19</sup> During the nineteenth century, a particular ethos of moralism developed and served as the cultural matrix from which Cuban identity was formed.<sup>20</sup> Philosopher Félix Varela—whose early nineteenth century writings have been described as the “bible of Cuban identity”—preached an “emancipatory moralism” and insisted that morality in Cuba would be measured by willingness to be “useful to the fatherland.”<sup>21</sup> Sixty years later, José Martí addressed the moral meanings of national independence, calling for a fundamental ethical change and transformation of Cuban political culture. “It is to the substance of these matters that we are going, rather than to the forms,” said Martí. “It is a case of changing a nation’s soul, [its] entire way of thinking and acting, and not just [its] external clothes.”<sup>22</sup> Martí’s invocation of a “moral republic” emanated from what has been described as a “missionary impulse” of historic dimensions that emphasized social jus-

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18. LOUIS A. PÉREZ JR., *THE WAR OF 1898*, at 126 (1998); see also David Rieff, *Cuba Refrozen*, FOREIGN AFF., July–Aug. 1996, at 62, 62 (noting that Cuba’s “political culture is steeped in the legends of resistance and self-immolation of the nineteenth-century struggle for independence”).

19. JAMES J. PANCRAZIO, *THE LOGIC OF FETISHISM: ALEJO CARPENTIER AND THE CUBAN TRADITION* 158 (2004); Antoni Kapcia, *One Hundred Years of Solitude: 1898 and 1998 in the Cuban Search for National Identity*, in *SPAIN’S 1898 CRISIS: REGENERATIONISM, MODERNISM, POST-COLONIALISM* 229, 236 (Joseph Harrison & Alan Hoyle eds., 2000); Nelson P. Valdés, *Cuban Political Culture: Between Betrayal and Death*, in *CUBA IN TRANSITION: CRISIS AND TRANSFORMATION* 207, 214 (Sandor Halebsky & John M. Kirk eds., 1992) (citing FÉLIX VARELA, 1 *LECCIONES DE FILOSOFÍA*).

20. See sources cited *id.*

21. See sources cited *supra* note 19.

22. 5 JOSÉ MARTÍ, 5 *OBRA COMPLETAS* [COMPLETE WORKS] 368–69 (1963), *quotation translated in* Sandor Halebsky & John M. Kirk, *Introduction*, in *CUBA: TWENTY-FIVE YEARS OF REVOLUTION, 1959 TO 1984* at 3, 7–8 (Sandor Halebsky & John M. Kirk eds., 1985).

tice and redemption for the benefit of all Cubans.<sup>23</sup> The ideal of a moral republic, based on an ethic of honor, dignity, and decorum, seized hold of the Cuban imagination. This ideal endured as a sentiment to which subsequent generations subscribed, and it shaped the discursive framework in which Cuban political culture developed.<sup>24</sup>

With the triumph of the revolution, Cubans moved purposefully to establish a society in accordance with nineteenth century ideals of self-sacrifice, collective duty, and civic participation. Indeed, Cuban scholars have described the revolution as the “resurrection of political and moral charisma” and an “ethical regeneration” derived from a “pre-existing moralistic movement that denounced and fought against selfish interests.”<sup>25</sup> Such idealism is the lens through which historic cultural concepts of social duty and moral responsibility have provided the normative context of political change.

All political systems are shaped, to varying degrees, by historically-determined ethical paradigms. In the United States, early foundational concerns focused on conceptions of republicanism and the proposition of civic virtue as individual initiative over State intervention. Patriotism is celebrated as freedom of the individual. In contrast, the Cuban revolution drew upon a tradition of civic virtue as a collective effort to achieve collective redemption in which the State intervened as a matter of moral duty to guarantee social justice.<sup>26</sup> The revolution’s commitment to fulfilling basic needs, for example, drew explicitly upon notions of moralism as inspiration for the radical transformation of society.<sup>27</sup> Fidel Castro

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23. See Archibald R.M. Ritter, *The Transferability of Socioeconomic Development Models of Revolutionary Cuba*, 7 CUBAN STUDIES/ESTUDIOS CUBANOS 183, 183 (1977); LOUIS A. PÉREZ, JR., CUBA BETWEEN EMPIRES: 1878–1902, at 106–07 (1983).

24. Valdés, *supra* note 19, at 214.

25. Nelson P. Valdés, *The Revolutionary and Political Content of Fidel Castro’s Charismatic Authority*, in A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION 27, 31 (Philip Brenner et al. eds., 2008).

26. Rafael Hernández & Haroldo Dilla, *Political Culture and Popular Participation in Cuba*, LATIN AM. PERSP., Spring 1992, at 38, 42–43 (Jennifer Dugan Abbassi & Jean Díaz trans. 1991) (equality as Cuba’s ideological culture).

27. Fidel Castro, Cuba Prime Minister, Address before the General Assembly of the People of Cuba (Sept. 2, 1960), available at <http://lanic.utexas.edu/project/castro/1960/> [hereinafter Castro General Assembly Speech] (relying on a vigorously moral people to achieve the goals of the revolution as expressed in the Havana Declaration); Fidel Castro, Cuba Prime Minister, Castro Speaks on Literacy Campaign (Aug. 17, 1961) (equating literacy campaigns with moral obligations), available at <http://lanic.utexas.edu/project/castro/db/1961/19610817.html> [hereinafter Castro Literacy Campaign Speech]; Fidel Castro, Cuba Prime Minister, Castro’s Aviation Day Speech (Apr. 18, 1963) (linking morality with patriotism), available at <http://www.lanic.utexas.edu/project/castro/db/1963/> [hereinafter Castro Aviation Day Speech]; see also Miguel Martínez-Saenz, *Che*

made frequent references to the virtues of personal sacrifice for the benefit of the collective good in order to encourage Cubans to undertake volunteer work, routinely offering reminders that personal worth is derived from service, not self-interest.<sup>28</sup> His exhortations resonated precisely because they drew upon a legacy derived from the nineteenth-century liberation project. Appeals not only to Marxism but to morality with antecedents in the nineteenth century must be understood as motivating the shaping of contemporary Cuba, and, as demonstrated below, appeals to morality permeate Cuban approaches to ordinary crime.<sup>29</sup>

*B. Moralism Actualized: Participation as Moral Social Conduct*

Cuban traditions of moralism are more than a theoretical construct; moralism must function to achieve a purpose. Values are practiced as part of daily life in the form of citizen participation and social organization. Participatory mechanisms are the means by which Cubans exercise their “place-bound source of self-identification” (that is, consciousness of being Cuban, or, *conciencia*) and transact the moral paradigm to advance the ideals of the revolution.<sup>30</sup> Programs to build housing, schools, and medical facilities, improve transportation, and develop agriculture require volunteers working in mass organizations.<sup>31</sup>

That most Cubans have been involved in some sort of campaign to implement Cuban-style socioeconomic development suggests that means have served as ends, and that the realization of the goals of any particular campaign acted to expand citizen participation in the revolution.<sup>32</sup> In-

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*Guevara's New Man: Embodying a Communitarian Attitude*, LATIN AM. PERSP., Nov 2004, at 15, 21.

28. Valdés, *supra* note 25; Castro General Assembly Speech, *supra* note 27; Castro Literacy Campaign Speech, *supra* note 27; Castro Aviation Day Speech, *supra* note 27.

29. Valdés, *supra* note 19, at 213.

30. LOUIS A. PÉREZ, JR., CUBA: BETWEEN REFORM AND REVOLUTION 340 (2d ed. 1995) [hereinafter PÉREZ, JR., CUBA]; Louis A. Pérez Jr., *Thinking Back on Cuba's Future: The Logic of Patria*, NACLA REP. ON THE AM., Mar.–Apr. 2009, at 12, 13 (2009). The importance of participatory mechanisms by which Cuba's social problems are encountered is noted extensively in the literature. See CAROLLEE BENGELSDORF, THE PROBLEM OF DEMOCRACY IN CUBA: BETWEEN VISION AND REALITY 8 (1994); RICHARD R. FAGEN, THE TRANSFORMATION OF POLITICAL CULTURE IN CUBA 2 (1969); Arthur MacEwan, *Why is Cuba Different?*, in CUBA: TWENTY-FIVE YEARS OF REVOLUTION, 1959 TO 1984, at 420, 420–21 (Sandor Halebsky & John M. Kirk eds., 1985).

31. Sandor Halebsky & John M. Kirk, *Introduction*, in CUBA: TWENTY-FIVE YEARS OF REVOLUTION, 1959 TO 1984 at 3, 7–8 (Sandor Halebsky & John M. Kirk eds., 1985); Hernández & Dilla, *supra* note 26, at 42.

32. BENGELSDORF, *supra* note 30, at 86; see also *On Celebrating the Cuban Revolution*, LAT. AMER. PERSP., Jan 2009, at 5, 11 (2009) (noting the high rate of Cuban participation in mass organizations).

deed, some scholars have insisted that the larger significance of the Cuban revolution has been its ability to continually mobilize the populace through mass organizations.<sup>33</sup> As one Cuban political scientist has written, citizen collaboration functions as the Cuban form of democracy, that is, “a system on which power is constructed and legitimated by citizen representation and participation.”<sup>34</sup> Popular participation has been “both motive and motor” of the revolutionary effort, as well as the measure of historic traditions of morality and revolutionary citizenship.<sup>35</sup>

Cuban society therefore can be best understood as the interdependent relationship between consciousness and cultural practices manifested as popular participation. Participatory mechanisms serve as the means by which individuals often gain access to resources and in turn become invested in relationships of interdependencies and mutual obligations.<sup>36</sup> These mechanisms serve as the networks where repeated cooperative interactions enhance personal connections and neighborliness and through which the fabric of social trust is woven. With respect to the focus of this Article, these participatory structures serve as the foundations of social control, mediating between ecological conditions, community disorder, and crime.<sup>37</sup>

## II. THE MACHINERY OF SOCIAL CONTROL

This Part examines the specific ways Cuban participatory structures affect social controls. It begins with an overview of approaches to social controls—these approaches being the comprehensive strategies used to deter behaviors deemed pernicious to stability and order.<sup>38</sup> Social con-

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33. BENGELSDORF, *supra* note 30, at 85; FAGEN, *supra* note 30, at 1–2; *see also infra* Part II(B)(1).

34. Rafael Hernández, *On Cuban Democracy: Cuba and the Democratic Culture*, in A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION 74, 76 (Philip Brenner et al. eds., 2008).

35. FAGEN, *supra* note 30, at 7.

36. Ulla V. Bondeson, *Levels of Punitiveness in Scandinavia: Description and Explanations*, in THE NEW PUNITIVENESS: TRENDS, THEORIES, PERSPECTIVES 189, 195 (John Pratt et al. eds., 2005) (discussing high levels of political participation in Scandinavian countries).

37. Todd R. Clear & Dina R. Rose, *Individual Sentencing Practices and Aggregate Social Problems*, in CRIME CONTROL AND SOCIAL JUSTICE: THE DELICATE BALANCE 27, 39 (Darnell F. Hawkins et al. eds., 2003).

38. STANLEY COHEN, VISIONS OF SOCIAL CONTROL 1 (1985); *see also* John R. Sutton, *Rethinking Social Control*, 21 L. & SOC. INQUIRY 943 (1996) (reviewing THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS (Walter W. Powell & Paul J. DiMaggio eds., 1991)) (“In the contemporary sociolegal literature, few concepts are invoked more frequently, and with less clarity of meaning and purpose, than that of social control.”).

trols include formal and informal strategies that emerge from local communities, government, or the market.<sup>39</sup> As a means of governance, they possess “the capacity of a social unit to regulate itself according to desired principles—to realize collective, as opposed to forced, goals.”<sup>40</sup>

Cuban participatory organizations, and, particularly, their micro-level practices, create the means for social control and influence the processes for responding to crime.<sup>41</sup> Participation in Cuban mass and local organizations both fosters an awareness of the conditions that often cause crime and builds community relationships essential to social control mechanisms.<sup>42</sup>

#### *A. Social Controls and Ordinary Crime in Cuba*

The control of crime is a basic function of a well-ordered society. Although there are a number of theories that seek to explain criminal behavior, two concepts stand as organizing principles. The first approach—often referred to as Individual or Rational Choice Theory—proposes that deviant behavior is a function of individual choice.<sup>43</sup> This perspective suggests criminals make rational choices among alternative courses of action (i.e., “crime is a decision not a disease”).<sup>44</sup> The second approach posits that deviant behavior is socially structured and that poor people

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39. Joachim J. Savelsberg, *Cultures of Control in Contemporary Society*, 27 L. & SOC. INQUIRY 685, 686, 708 (2002) (reviewing DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* (2001)) (noting a diversity of approaches to social controls).

40. Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 610 (1999) (citing Morris Janowitz, *Sociological Theory and Social Control*, 81 AM. J. SOC. 82, 87 (1975)); see also John Hasnas, *The Depoliticization of Law*, 9 THEORETICAL INQ. L. 529, 530 (2008) (noting that laws may be coercive but not dominate).

41. See Manuel A. Gómez, *All in the Family: The Influence of Social Networks on Dispute Processing (A Case Study of a Developing Economy)*, 36 GA. J. INT'L & COMP. L. 291, 302–04 (describing how social conditions may influence the culture of dispute processes).

42. James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. S. 95, 102–04 (1988) (describing social capital as interpersonal relationships and institutional linkages through which obligations and expectations are facilitated, norms and sanctions developed, and where people make use of each other's skills and knowledge).

43. See generally Daniel S. Nagin & Raymond Paternoster, *Enduring Individual Differences and Rational Choice Theories of Crime*, 27 LAW & SOC'Y REV. 467 (1993).

44. DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 198 (2001); John Hagan, *Introduction: Crime in Social and Legal Context*, 27 L. & SOC'Y REV. 255, 255 (1993) (the ethos of individualism focuses on crime as a function of the individual).

and racial minorities are more likely to be identified as criminals because of the state of powerlessness and the socioeconomic disadvantages they suffer.<sup>45</sup> Under this approach, crime is the direct and indirect result of social conditions, including historical circumstances, political conditions, and economic forces.<sup>46</sup>

Rational Choice Theory is associated with a course of action less tolerant of crime and more punitive toward acts defined as criminal. In this theory, the purpose of social controls is to isolate and sanction those individuals who will not and/or cannot control their own conduct, and to subject such individuals to strict controls.<sup>47</sup> Rational Choice Theory also minimizes responsibility or obligation on the part of society in general for the actions of criminals.<sup>48</sup>

In contrast, the social structure theory adopts the social control response that David Garland has called a “broader solidarity project.”<sup>49</sup> This theory focuses on the macro political conditions and economic concerns, and the development of a social agenda that focuses on poverty prevention, economic assistance, and distribution of services.<sup>50</sup> The circumstances of communities in which offenders reside are central points of consideration and interest.<sup>51</sup>

The Cuban approach to social control of crime follows the structural approach. It is based on the premise that ordinary crime is the result of particular social conditions and is therefore responsive to solutions mediated through mass and local organizations.<sup>52</sup> Cuban jurists approach ordinary crime—especially domestic violence and juvenile delinquency—in the context of political, social, and economic conditions, and they draw on structural-based theoretical foundations for guidance.<sup>53</sup> They

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45. *Id.*

46. *Id.*

47. GARLAND, *supra* note 44, at 198.

48. *Id.*

49. *Id.* at 199.

50. *Id.*; see also Jeffrey Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173 (2008).

51. Ahmed A. White, *Capitalism, Social Marginality, and the Rule of Law's Uncertain Fate in Modern Society*, 37 ARIZ. ST. L.J. 759 (2005) (describing this approach as a function of the social welfare system that mitigates unemployment and poverty).

52. Of course, Cuba's consideration of the social causes of crime is not unique. See GARLAND, *supra* note 44, at 188 (describing an approach used for much of the 20th century in the United States and Great Britain).

53. See Caridad Navarrete Calderón, *Early Preventing Work in Groups of Prevention of the Popular Councils* 3 (2002) (noting a consensus about the inefficiencies of formal penal system controls) (on file with author); Euclides Catá Guilarte, *Cuban Social Policy and Disadvantaged Social Groups*, in SOCIAL WORK IN CUBA AND SWEDEN 93, 101

believe the proper response to these structural problems is to improve the human condition (“*lucha por la formación de un hombre mejor*”) through distribution of services by way of egalitarian initiatives.<sup>54</sup> At the same time, criminologists draw on theories of collectively enacted social agency whereby individual participation is central to achieving the shared public goal of crime prevention.

Individuals who transgress well-settled norms are often provided a range of services as a front-line response.<sup>55</sup> Criminologists proceed from the premise that experts, in collaboration with the community, are duty-bound to promote human values within each individual, including those with criminal predilections.<sup>56</sup> Criminals are recognized as possessing both strengths and weaknesses—they might threaten the social order, but with some intervention, they may become productive members of society.<sup>57</sup> To this end, Cubans have established prevention commissions at both the national and local levels that implement strategies to deter criminal behavior and thereby lessen the need to exclude from society those who manifest criminal tendencies.<sup>58</sup>

Cuban criminologists have been more concerned with examining crime as an outgrowth of poverty and market forces than with contemplating deterrence.<sup>59</sup> Cuba’s Penal Code, amended in 1979 for the first time in forty years, eliminated those penal norms that “no longer correspond

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(Sven-Axel Månsson & Clotilde Proveyer Cervantes eds., 2005); Ofelia de los Milagros García Cueto, *La Violencia, Un Mal Sin Fronteras* [*Violence, A Harm without Borders*], 6 REVISTA DE CIENCIAS MÉDICAS LA HABANA (2000), available at [http://www.epicmha.sld.cu/hab/vol6\\_2\\_00/hab010200.htm](http://www.epicmha.sld.cu/hab/vol6_2_00/hab010200.htm).

54. García Cueto, *supra* note 53.

55. Antoni Kapcia, *Setting the Stage for a Discussion of Cuban Civil Society*, in *THE CHANGING DYNAMIC OF CUBAN CIVIL SOCIETY* 20, 25, 27, 35–36 (Alexander I. Gray & Antoni Kapcia eds., 2008) (noting efforts to work with even those considered enemies of the revolution).

56. Calderón, *supra* note 53, at 16.

57. Patricia Grogg, *Crime and Counterrevolution*, CUBA UPDATE, Nov. 1991, at 30, 31 (1991) (quoting Dr. Fernando Barral, noted Cuban psychiatrist and professor of criminology, who observed that Cuba’s concern with economic crime does not relate to private property, but with the “economic principle of socialist distribution”) (on file with author); Interview with sociologist in Havana, Cuba (Oct. 15, 2005).

58. Sheryl L. Lutjens, *Schooling and “Clean Streets” in Socialist Cuba: Children and the Special Period*, in *CHILDREN ON THE STREETS OF THE AMERICAS: GLOBALIZATION, HOMELESSNESS AND EDUCATION IN THE UNITED STATES, BRAZIL AND CUBA* 55, 58 (Roslyn Arlin Mickelson ed., 2000) (referencing prevention commission systems established through Decree Laws beginning in the early 1980s).

59. See generally Bondeson, *supra* note 36, at 194 (observing that countries that emphasize a welfare model are likely to have less stringent penal systems); Grogg, *supra* note 57.

with the reality of [Cuban] economic, social and political development.”<sup>60</sup> Raúl Gómez Treto, senior advisor to the Cuban Ministry of Justice and President of the Cuban Society for Civil and Family Law, described the 1979 amendments as a paradigm shift that “depenalized” certain crimes—particularly those related to juveniles and families—and redesignated them as antisocial actions committed as a consequence of economic need or lack of education.<sup>61</sup>

Other reforms demonstrate that Cubans have reconsidered the efficacy of criminalization and punishment toward deterrence of ordinary crime. By the early 1980s, Cuba had again moved purposefully to decriminalize a number of offenses by changing the character of criminal laws and reducing the use of detention.<sup>62</sup> Cuba later eliminated an additional host of petty offenses and codes of conduct from the Penal Code, while the penalties for other offenses were reduced from imprisonment to fines and education programs.<sup>63</sup>

Cuban criminologists tend to approach crime control from pragmatic and humanitarian perspectives. Professor Caridad Navarrete Calderón, one of Cuba’s foremost criminologists, describes her research as “humanistic social projects” and emphasizes the need to embed problem-solving skills in communities rather than impose punitive responses via formal criminal justice institutions.<sup>64</sup> Her research aims to shift the social

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60. DEBRA EVENSON, *REVOLUTION IN THE BALANCE* 148 (1994).

61. Raúl Gómez Treto, *Thirty Years of Cuban Revolutionary Penal Law*, *LATIN AM. PERSP.*, Spring 1991, at 114, 118.

62. MARJORIE S. ZATZ, *PRODUCING LEGALITY: LAW AND SOCIALISM IN CUBA* 71 (1994); Mary Lamey, *Mariela Castro Speaks out for Cuba’s Gay Minority*, *THE GAZETTE* (Montreal), July 29, 2006, at A7 (noting the decriminalization of sodomy). Other matters, such as nonpayment of rent, while not a criminal matter, were removed from the courts. See Robert Cantor, *New Laws for a New Society*, *CUBA RESOURCE NEWSL.*, Dec. 1973, at 3, 3.

63. See EVENSON, *supra* note 60, at 151–52; Cantor, *supra* note 62, at 3; Jean Stubbs, Book Review, 17 *J. L. & SOC’Y* 389, 391 (1990) (reviewing ADELE G. VAN DER PLAS, *REVOLUTION AND CRIMINAL JUSTICE: THE CUBAN EXPERIMENT, 1959–1983*). The U.S. State Department has also noted the depenalization of petty offenses in Cuba. See *Human Rights In Cuba: An Update*, U.S. DEP’T ST. BULL., April, 1989, at 59, available at <http://www.archive.org/details/departmentofstatb89unit>.

64. Interview with Dr. Caridad Navarrete Calderón in Havana, Cuba (Oct. 12, 2005); see also Caridad Navarrete Calderón, *Caracterización Criminológica Victimológica de Mujeres Comisoras de Lesiones de Ciudad de la Habana [Criminological Victimological Characterization of Women Assaulters in Havana]*, *ILANUD: REVISTA DEL INSTITUTO LATINOAMERICANO DE LAS NACIONES UNIDAS PARA LA PREVENCIÓN DEL DELITO Y EL TRATAMIENTO DEL DELICUENTE*, 2006, at 235, 239–40, available at <http://ilanud.or.cr/revista27.html> [hereinafter *Characterization of Women Assaulters*]; Marjorie S. Zatz & James H. McDonald, *Structural Control and Ideology Consistency: Changes in the Form and Content of Cuban Criminal Law*, in *MAKING LAW: THE STATE, THE LAW AND*

meanings of crime, encourage mutual aid, and improve the distribution of goods and services in order to ameliorate conditions commonly associated with crime and deviance.<sup>65</sup>

Policymakers now subscribe to this belief in community mediation as social control and encourage its exercise in multiple spheres—particularly by the popular organizations assigned to civic tasks—as a form of preventative intervention.<sup>66</sup>

### *B. Participatory Mechanisms as a Means of Social Control*

#### 1. Overview of Cuban Organizations

The Cuban revolution established four principal mass organizations, all of which function within the framework of the Cuban approach to social controls as a means of mobilizing the public to carry out centrally determined objectives. They include the Committees for the Defense of the Revolution (“CDR”), the Federation of Cuban Women (“FMC”), the Confederation of Cuban Workers (“CTC”), and the National Organization of Small Agriculturists (“ANAP”).<sup>67</sup> Since the revolution, the CDRs have provided vigilance against counter-revolutionary activity and crime in neighborhoods and work places.<sup>68</sup> The FMC’s initial objective was to

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STRUCTURAL CONTRADICTIONS 127, 141 (William J. Chambliss & Marjorie S. Zatz eds., 1993) (noting that Cubans determined to reserve “use of the criminal sanction as a last resort, and within that, incarceration as *the* last resort”).

65. Berta E. Hernández-Truyol, *Cuba and Good Governance*, 14 *TRANSNAT’L L. & CONTEMP. PROBS.* 655, 668–669, 671–81 (2004) (noting Cuba’s achievements and high scores according to the United Nations’ Human Development Index in areas such as the eradication of hunger, universal education, health, and the “equitable promotion of social and economic development for the benefit of all citizens”); see also Donald W. Bray & Marjorie Woodford Bray, *Introduction: The Cuban Revolution and World Change*, 29 *LATIN AM. PERSP.*, May 2002, at 3, 4 (noting that in 2001, the president of the World Bank observed that Cuba had excelled in providing for the social welfare of its people).

66. Interview with Dr. Caridad Navarrete Calderón, *supra* note 64; see also COHEN, *supra* note 38, at 127, 265 (describing how community controls can respond to “genuine psychic and social needs”); Fagan & Meares, *supra* note 50, at 186–87 (noting that ways that communities may be structured through networks and community groups will impact the degree of criminal behavior in that community).

67. For a thorough treatment of Cuban mass organizations, see generally FAGEN, *supra* note 30.

68. See Rhoda Pearl Rabkin, *Cuban Political Structure: Vanguard Party and the Masses*, in *CUBA: TWENTY-FIVE YEARS OF REVOLUTION, 1959 TO 1984*, at 251, 263 (Santor Halebsky & John M. Kirk eds., 1985).

incorporate women into the realm of productive labor.<sup>69</sup> Currently, the FMC establishes programs to assist women and families with many facets of day-to-day life, including health concerns, family violence, gender discrimination, educational programs, and employment issues.<sup>70</sup> The CTC, described as “representative of the entire working class of Cuba,” works to further Cuba’s post-1959 political, social, and economic agenda, often through legislative proposals and initiatives.<sup>71</sup> The ANAP sought to incorporate peasants and small farmers into the efforts to fulfill the objectives of the revolutionary project.<sup>72</sup>

While much has been written about these organizations elsewhere, the relevant part for purposes of understanding the Cuban approach to ordinary crime is the door-to-door and block-by-block processes by which these organizations operate.<sup>73</sup> In order to carry out their overall mission and their individual tasks, they have created an infrastructure that also serves as the foundation for social controls and crime prevention.

In addition to these mass organizations, over 2,000 local civic associations have emerged across the island over the past fifteen years, largely in response to the post-Soviet economic crisis.<sup>74</sup> These civic associations include neighborhood development associations, religious groups, and fraternal, cultural, and sports organizations.<sup>75</sup> They have obtained official support due to their their commitment to national norms and their ability to respond to crisis situations and fulfill various critical needs that are left

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69. Lois M. Smith & Alfred Padula, *The Cuban Family in the 1980s*, in TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990S, at 175, 178 (Sandor Halebsky & John M. Kirk, eds. 1990).

70. See the Special Rapporteur on Violence Against Women, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Addendum: Report on the Mission to Cuba*, ¶¶ 12, 42, 74, delivered to the U.N. Econ. & Soc. Council [ECOSOC] Comm. on Human Rights, U.N. Doc. E/CN.4/2000/68/Add.2 (Feb. 8, 2000) [hereinafter Special Rapporteur’s Report].

71. Rabkin, *supra* note 68, at 264. The CTC was actually established prior to the revolution but came under the control of the Cuban government after 1959. *Id.*; see also Peter Roman, *Representative Government in Socialist Cuba*, LATIN AM. PERSP., Winter 1993, at 7, 19.

72. PÉREZ, JR., CUBA, *supra* note 30, at 330.

73. See *infra* Part II(B)(2).

74. See Haroldo Dilla & Philip Oxhorn, *The Virtues and Misfortunes of Civil Society in Cuba*, LATIN AM. PERSP., July 2002, at 11, 17. See generally Miren Uriarte, *Social Policy Responses to Cuba’s Economic Crisis of the 1990s*, 35 CUBAN STUDIES 105 (2004).

75. Dilla & Oxhorn, *supra* note 74, at 16–20.

unattended by a weakened centralized bureaucracy.<sup>76</sup> Local organizations have become the sites of debates, particularly debates as to what are the most efficient means of resolving problems caused by shortages and the decline in general day-to-day living conditions.<sup>77</sup> As neighborhood projects, they incorporate vulnerable populations into community self-help endeavors and social service initiatives.<sup>78</sup> Many of the local organizations function as social science laboratories.<sup>79</sup>

Mass and local organizations function at all levels of society: within the family and inside households, in neighborhoods and at workplaces. These organizations encourage a dynamic process of citizen-to-citizen involvement and address the conditions that contribute to crime. It is out of these very structures that the logic of social controls and crime in Cuba emerges. The focus is on fixing the broken window rather than criminalizing the window breaker.<sup>80</sup>

## 2. Social Capital and Crime Prevention through Distribution of Public Goods

Most Cuban organizations were designed to facilitate cooperative action associated with improving the quality of day-to-day life of individuals and communities. As such, they contribute to the development of social capital—the means by which individuals and groups obtain material and social benefits through network connections and participation in civic organizations.<sup>81</sup> Social capital not only yields a broad range of resources for use and exchange by citizen participants, but has also been

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76. *Id.*; Gray & Kapcia, *supra* note 7, at 11, 12 (noting that groups outside of formal structures do not challenge the government and describing the 1993 Association Act, which made it easier for groups to register as NGOs).

77. Antoni Kapcia, *Lessons of the Special Period*, *LAT. AMER. PERSP.*, Jan. 2009, at 30, 33.

78. *See infra* notes 83–85, 89, 99–101 and accompanying text.

79. Interview with the Department of Sociology of the University of Havana in Havana, Cuba (Nov. 14, 2007) (discussing projects led by university researchers with students and community residents to explore and experiment with solutions to neighborhood problems, many of which bear on crime and criminal behavior).

80. *See* Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 *MICH. L. REV.* 291, 342 (1998). The “Broken Windows” policing strategy relied on police for intense enforcement of laws on minor “quality of life” offenses coupled with the aggressive stops and searches of citizens. *See* Jeffrey Fagan et al., *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City*, in *RACE, ETHNICITY, AND POLICING: NEW AND ESSENTIAL READINGS* 309 (Stephen K. Rice & Michael D. White eds., 2010).

81. Susan Saegert & Gary Winkel, *Crime, Social Capital, and Community Participation*, 34 *AM. J. COMMUNITY PSYCHOL.* 219, 221 (2004).

demonstrated to reduce rates of crime by creating community trust and investing in social welfare through the distribution of public goods.<sup>82</sup>

The mass organizations' core projects clearly demonstrate these phenomena. The functions to which Cuban organizations dedicate themselves—including economic development, housing construction and repairs, and improvement of employment and workplace conditions—directly develop social capital through network exchanges and citizen cooperation.<sup>83</sup> The CDRs, the FMC, the ANAP, and the CTC engage citizens in the type of efforts that promote social welfare and improve living conditions, such as: literacy campaigns, door-to-door book distributions, provision of daycare services, child development initiatives, school attendance programs, and educational programs for workers and farmers.<sup>84</sup>

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82. ROBERT J. SAMPSON & JOHN H. LAUB, *CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE* 141 (1993) (observing that the link between increased social capital and social control theory relating to crime is “straightforward”); Coleman, *supra* note 42, at S98 (defining social capital as “making possible the achievement of certain ends that in its absence would not be possible”); Katherine Beckett & Bruce Western, *Growing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy*, in *MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES* 35, 46 (David Garland ed., 2001); *see also* Nan Lin, *Building a Network Theory of Social Capital*, in *SOCIAL CAPITAL: THEORY AND RESEARCH* 3–5 (Nan Lin et al. eds., 2001).

83. BENGLSDORF, *supra* note 30, at 85; JORGE I. DOMÍNGUEZ, *CUBA: ORDER AND REVOLUTION* 261 (1978); FAGEN, *supra* note 30, at 88, 91; Marguerite G. Rosenthal, *The Problems of Single Motherhood in Cuba*, in *CUBA IN TRANSITION: CRISIS AND TRANSFORMATION* 161 (Sandor Halebsky & John M. Kirk eds., 1992) (noting the FMC's economic support for single mothers); *see also* Smith & Padula, *supra* note 69, at 178.

84. BENGLSDORF, *supra* note 30, at 85; FAGEN, *supra* note 30, at 88; Domínguez, *supra* note 83, at 261, 268 (noting, for example, the 95% rate of attendance in schools); Gail Lindenberg, *The Labor Union in the Cuban Workplace*, *LATIN AM. PERSP.*, Winter 1993, at 28, 28–30; Smith & Padula, *supra* note 69, at 178. The CDRs developed “exemplary parenthood,” in which parents maintain active involvement in schools, and both parents and children conform to school regulations. DEBRA EVENSON, *WORKERS IN CUBA: UNIONS AND LABOR RELATIONS* 14 (2002) (describing worker programs to evaluate the strengths and weaknesses of their worksites); Margo Kirk, *Early Childhood Education in Revolutionary Cuba During the Special Period*, in *A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION* 302, 305 (Philip Brenner et al. eds., 2008) (noting that the burdens of raising families fall to community); Marifeli Pérez-Stable, *Socialism and Democracy: Some Thoughts After 30 Years of Revolution in Cuba*, in *TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990S*, at 21, 26–29 (Sandor Halebsky & John M. Kirk eds., 1990); Andrew Zimbalist, *Cuban Economic Planning: Organization and Performance*, in *CUBA: TWENTY-FIVE YEARS OF REVOLUTION, 1959 TO 1984*, at 213, 220 (Sandor Halebsky & John M. Kirk eds., 1985); *see also* Eliza Barclay, *Greening Cuba*, *ENVTL. MAG.*, May–June 2004, at 18; OXFAM AMERICA, *CUBA: GOING AGAINST THE GRAIN*, Chap. II, at 4, Chap. III, at 8–9 (2001), available at <http://www.oxfamamerica.org/publications/>

Similarly, local groups such as the Neighborhood Transformation Workshops (*Talleres de Transformación Integral del Barrio*) assist with the distribution of health care services, workplace safety protections, and vaccination programs.<sup>85</sup> They undertake public works projects to improve street lighting and other physical conditions of neighborhoods.<sup>86</sup> They foster a sense of inclusion in community projects and enhance the processes of cooperative problem-solving.<sup>87</sup> These organizations—both mass and local—address poor living conditions, lack of day-to-day resources, limited education, and diminished economic opportunities, all of which are readily associated with crime.<sup>88</sup> They bear directly on the conditions that, when left unaddressed, often give way to community disrepair, family despair, and deviance. To the extent that Cuban organizations succeed in their goals, they also confer legitimacy on governmental initiatives and, thus, contribute to compliance with social and legal norms.<sup>89</sup>

### 3. Collective Supervision and the Complexities of Categorizing Deviance

Participatory structures function in two additional and related ways as a means of crime prevention via social control. First, they collectively supervise residents in cities and in rural areas throughout the island, often in ways that are directly related to crime control. Indeed, crime prevention is a matter of specific concern to most organizations. Citizens often prefer to turn to the CDRs to remedy wrongs and resolve local disputes

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cuba-going-against-the-grain; Maria Gropas, *Landscape, Revolution and Property Regimes in Rural Havana*, 33 J. PEASANT STUD. 248, 257 (2006).

85. Andrea Colantonio & Robert B. Potter, *Participatory and Collaborative Planning in 'Special Period' Cuba*, in PARTICIPATORY PLANNING IN THE CARIBBEAN: LESSONS FROM PRACTICE 68, 89 (Jonathan Pugh & Robert B. Potter eds., 2003); Uriarte, *supra* note 74, at 124–28.

86. Colantonio & Potter, *supra* note 85, at 82–83; Uriarte, *supra* note 74, at 121–23.

87. Antoni Kapcia, *Educational Revolution and Revolutionary Morality in Cuba: The 'New Man,' Youth and the New 'Battle of Ideas,'* 34 J. MORAL EDUC. 399, 407 (2005); Saegert & Winkel, *supra* note 81, at 230.

88. John F. Wozniak, *Poverty and Peacemaking Criminology: Beyond Mainstream Criminology*, 16 CRITICAL CRIMINOLOGY 209, 216 (2008).

89. Fagan & Meares, *supra* note 50, at 188; OXFAM AMERICA, *supra* note 84, at Chap. III, at 8 (noting that ANAP's greening efforts were successful because of their organizational strength and close ties to members).

rather than seek formal legal relief through the courts.<sup>90</sup> The *Talleres* have become sites for intervention in family dysfunction and violence.<sup>91</sup>

Similarly, for matters relating to ordinary crime, workers turn to the CTC in lieu of formal legal charges.<sup>92</sup> For example, one of the most serious problems presented to the CTC has been that of workplace theft. During Cuba's Special Period,<sup>93</sup> theft of state property increased, creating a significant burden on Cuba's fragile economy that provoked an outcry for the imposition of harsh penalties.<sup>94</sup> After consideration and debate, the CTC assumed a preventative approach that focused on reducing opportunities for pilfering and counseling workers, whose rehabilitation was considered more important than punishment.<sup>95</sup>

Even when not specifically addressing crime, mass organizations serve as sites where knowledge about crime and deviance is gained and from which responses are formulated.<sup>96</sup> CDR volunteers have direct contact with residents, and are each responsible for a given neighborhood.<sup>97</sup> They rely on retired residents who are frequently at home and who take note of suspected criminal activity in their neighborhoods so that they may intervene before serious problems develop.<sup>98</sup> The FMC has maintained what scholars have termed a "ubiquitous presence" in neighborhoods; organizers go door-to-door visiting homes to fulfill their tasks and conduct studies and surveys.<sup>99</sup> They are uniquely positioned to identify

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90. DOMÍNGUEZ, *supra* note 83, at 265 (noting that CDR activities related to vigilance have been redirected to ordinary crime); Debra Evenson, *The Changing Role of Law in Revolutionary Cuba*, in TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990S 53, 56 (Sandor Halebsky & John M. Kirk eds., 1990).

91. Clotilde Proveyer Cervantes, *A Self-Help Group for Battered Women*, in SOCIAL WORK IN CUBA AND SWEDEN 211, 218 (Sven-Axel Månsson & Clotilde Proveyer Cervantes eds., 2005).

92. Evenson, *supra* note 90, at 56; Mark H. Kruger, *Community-Based Crime Control in Cuba*, 10 CONTEMP. JUST. REV. 101, 108 (2007) (noting that union assemblies have become the sites for determining the best ways to deal with crime in the workplace).

93. Cuba declared a "Special Period in Time of Peace" in 1990 in response to the economic collapse occasioned by the demise of the Soviet Union, its key trading partner and provider of subsidies. *See* Hernández & Dilla, *supra* note 26, at 23.

94. Evenson, *supra* note 90, at 69.

95. *Id.*

96. *See* GARLAND, *supra* note 44, at 205.

97. FAGEN, *supra* note 30, at 92; PÉREZ, JR., CUBA, *supra* note 30, at 330.

98. Kruger, *supra* note 92, at 108; *see also infra* notes 332–33 and accompanying text (contrasting neighborhood watch programs in the United States with the Cuban system).

99. Alexander I. Gray, *The Genesis of NGO Participation in Contemporary Cuba*, in THE CHANGING DYNAMIC OF CUBAN CIVIL SOCIETY 160, 161 (Alexander I. Gray & Antoni Kapcia eds., 2008) (noting that 85% of women over the age of 14 belong to the FMC); Rosenthal, *supra* note 83, at 161 (noting FMC support for single mothers); *see also* Smith & Padula, *supra* note 69, at 178.

community problems and gain knowledge of household dynamics.<sup>100</sup> The *Talleres* rely on a social work case-management model and make use of the block-by-block infrastructure already put in place by the CDRs in order to provide services.<sup>101</sup> They have also established research and evaluation teams to observe and report on neighborhood conditions.<sup>102</sup> These day-to-day encounters combine to form the participatory mechanisms by which Cubans collectively supervise one another from within groups of law-abiding individuals acting in bounded solidarity to preserve order and protect the vulnerable.<sup>103</sup>

The second explanation for how participatory structures facilitate crime prevention is that it becomes a more difficult proposition to exclude individuals for deviant behavior in societies where members share deep commitments to sustaining communities and assume obligations for mutual wellbeing. John Braithwaite has described this mutual caretaking as a social corollary to such communal social structures.<sup>104</sup> In this context, “[T]he complex experience that people have of each other makes it more difficult to squeeze the identities of offenders into crude master categories of deviance.”<sup>105</sup> Other scholars refer to the dynamic of “linked fate” as a phenomenon of empathy among community members that affects responses to crime.<sup>106</sup>

These dynamics describe circumstances in Cuba, where organizational processes bring individuals into close proximity to one another for purposes of solidarity and support. Members engage with neighbors and co-workers, and identify with each other’s daily problems, particularly the very circumstances that may give rise to disaffection and deviance.<sup>107</sup>

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100. Sarah M. Santana, *Whither Cuban Medicine? Challenges for the Next Generation*, in TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990S, at 251, 251–53, 266 (Sandor Halebsky & John M. Kirk eds., 1990).

101. Lourdes Pérez Montalvo, *Social Work Experience in Cuba*, J. CUBAN AM. ALLIANCE, Feb. 2002, at 5, available at [http://www.redandgreen.org/Cuba/Social\\_Work/sw05-lourdes.htm](http://www.redandgreen.org/Cuba/Social_Work/sw05-lourdes.htm); Uriarte, *supra* note 74, at 125–26, 128.

102. Colantonio & Potter, *supra* note 85, at 88; Pérez Montalvo, *supra* note 101.

103. Kruger, *supra* note 92, at 101; see also Alejandro Portes & Julia Sensenbrenner, *Embeddedness and Immigration: Notes on the Social Determinants of Economic Action*, 98 AM. J. SOC. 1320, 1324 (1993) (describing sources of social capital and principled group-oriented behavior); Kacpia, *supra* note 55, at 32 (describing the process of enlisting the older population that comprise the Asociación de Combatientes de la Revolución to guard against crime in their neighborhoods).

104. JOHN BRAITHWAITE, CRIME, SHAME AND REINTEGRATION 97 (1989).

105. *Id.*

106. Fagan & Meares, *supra* note 50, at 222–23 (citing MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AMERICAN POLITICS 77 (1994)).

107. Miren Uriarte, *Rediscovering Lo Local: The Potential and the Limits of Local Development in Havana*, in THE CHANGING DYNAMIC OF CUBAN CIVIL SOCIETY 90, 110

When community members identify deviant behavior, they are more likely to seek services than to punish.

The methods by which the CTC carries out its functions provide an example of the phenomenon of linked fate. CTC members collaborate to establish wages and set material incentives. In determining allocations, they consider not only worker productivity but also individual needs.<sup>108</sup> Through these deliberations, co-workers gain knowledge of family composition, living conditions, health, and other hardships and circumstances.<sup>109</sup> A similar process takes place through ANAP's deliberative processes, by which decisions are made as to how to allocate resources to support individual families.<sup>110</sup>

These mutual dependencies act to reduce the traditional monopolistic control exercised by formal criminal justice systems over criminal behavior. Because of the commonplace nature of civic participation in matters related to neighborhood wellbeing, the boundaries of participation are defined only vaguely and readily yield to intervention on behalf of individuals and families in lieu of resort to formal criminal justice mechanisms.

This is not to suggest that these organizations always function constructively. Surveillance is at times an intrusive practice, one used as a mechanism of intimidation. It not infrequently passes into the realm of harassment.<sup>111</sup> The CDRs have carried out repressive acts, such as denouncing and detaining suspected counter-revolutionaries.<sup>112</sup> Neighbors have informed on one another, often resulting in unwarranted accusations.<sup>113</sup> The mass organizations have also suffered from corruption, offi-

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(Alexander I. Gray & Antoni Kapcia eds., 2008) (noting that as a result of the *Talleres*, Cubans gain familiarity with the needs of their community); Gail Reed, *From SiCKO to SALUD: The Truth About the Cuban Health Care System*, HUFFINGTON POST, July 15, 2007, [http://www.huffingtonpost.com/gail-reed/from-sicko-to-e\\_b\\_56308.html](http://www.huffingtonpost.com/gail-reed/from-sicko-to-e_b_56308.html) (describing nurses making house calls to check on the elderly and to remind people about their checkups).

108. Richard L. Harris, *Bureaucracy Versus Democracy in Contemporary Cuba: An Assessment of Thirty Years of Organizational Development*, in *CUBA IN TRANSITION: CRISIS AND TRANSFORMATION* 77, 83 (Sandor Halebsky & John M. Kirk eds., 1992); Evenson, *supra* note 84, at 24; Zimbalist, *supra* note 84, at 219.

109. Lindenberg, *supra* note 84, at 35 (noting that services and housing were fairly distributed, taking into consideration workers' "pressing needs"); Zimbalist, *supra* note 84, at 220.

110. DOMÍNGUEZ, *supra* note 83, at 303; Gropas, *supra* note 84, at 264.

111. Benigno E. Aguirre, *Social Control in Cuba*, *LATIN AM. POL. & SOC'Y*, Summer 2002, at 67, 78 (describing the Rapid Response Brigades that forcefully repressed activity deemed counter-revolutionary).

112. *Id.*

113. BENGELSDORF, *supra* note 30, at 85; FAGEN, *supra* note 30, at 96.

sciousness, and bureaucratic stagnation.<sup>114</sup> Moreover, the success of these organizations has varied from neighborhood to neighborhood and has been hampered by the scarcity of material resources and local political leadership.<sup>115</sup> But in matters related to the facets of everyday life, these organizations have been generally successful in controlling crime. They do so by improving living and working conditions, and fostering the necessary circumstances for the development among ordinary Cubans of empathetic relationships that impede the imposition of categorical stigma on those who exhibit deviant behavior.<sup>116</sup>

### III. ORDINARY CRIME: DOMESTIC VIOLENCE AND JUVENILE DELINQUENCY

A review of the Cuban approach to domestic violence and juvenile delinquency serves as a case study of the ways political culture and social controls interact to produce a coherent and generally successful policy response to crime.

Cubans have focused on promoting norms of gender equality and social solidarity as the principal means to deter violence against women. Cuban criminologists proceed from two assumptions—(1) education can change gender norms that contribute to domestic violence<sup>117</sup> and (2) attention to the material needs of households supports an environment conducive to stable, violence-free families.<sup>118</sup>

Similarly, the dominant response to juvenile delinquency in Cuba has focused not on punishment but on prevention strategies that privilege the delivery of services to children, families, and communities. Cubans have been careful to avoid stigmatizing youth who exhibit deviant behavior. Instead, they emphasize social work methodologies as a means to attend

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114. FAGEN, *supra* note 30, at 100.

115. Colantonio & Potter, *supra* note 85, at 94–95.

116. Santana, *supra* note 100, at 262; *see also* BRAITHWAITE, *supra* note 104, at 88; Jill Hamberg, *Cuban Housing Policy*, in *TRANSFORMATION AND STRUGGLE: CUBA FACES THE 1990S*, at 235, 246 (Sandor Halebsky & John M. Kirk eds., 1990).

117. Ellen Hardy & Ana Luisa Jiménez, *Masculinidad y Género [Masculinity and Gender]*, 27 *REVISTA CUBANA DE SALUD PÚBLICA* 77, 79 (2001).

118. Caridad Navarrete Calderón, *El Impacto de la Investigación-acción Participativa en la Actividad Preventiva Social y Criminológica [The Impact of Participative Investigation-Action in Social and Criminological Preventive Activity]*, ANUARIO DEL CENTRO DE INVESTIGACIONES JURÍDICAS 12 (2006) (Cuba), available at <http://cij.minjus.cu/pdf/anuario2006/04accion/04accion.pdf> (noting that prevention projects have as a goal the improvement of material conditions for families); Characterization of Women Assaulters, *supra* note 64, at 236.

to family dynamics, child-rearing, and community activities that nurture and teach social values.<sup>119</sup>

In both instances, formal legal responses eschew punitive crime control measures<sup>120</sup>—Cuba's laws mandate prevention rather than punishment and are thus constitutive of the informal processes that serve as the primary means to address domestic violence and juvenile crimes. They produce normative changes and incorporate potential perpetrators into dominant social structures as a way to prevent criminal activity.

### A. Domestic Violence

#### 1. Gender Equality as a Framework<sup>121</sup>

Cuban criminologists who specialize in domestic violence have argued that eradicating gender-based violence first requires the transformation of relationships between men and women, with a focus on women's equality.<sup>122</sup> An understanding of the Cuban approach to the former requires an examination of developments toward achieving the latter.

Among the many things that changed in Cuba after 1959 was the expanded presence and participation of women in public realms. New possibilities provided vast numbers of women with a new sense of purpose and significantly altered the gender determinants of daily life, at least during the early years. With the triumph of revolution, Cuba initiated a National Development Strategy to eliminate all forms of discrimination and to address women's issues specifically.<sup>123</sup> The FMC established day

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119. Calderón, *supra* note 118, at 13.

120. See *infra* notes 166–68, 193–95, 198, 282–83 and accompanying text.

121. Much has been written elsewhere about demonstrable improvement of equality for women in Cuba. See generally LOIS M. SMITH & ALFRED PADULA, *SEX AND REVOLUTION: WOMEN IN SOCIALIST CUBA* (1996); MARGARET RANDALL, *WOMEN IN CUBA: TWENTY YEARS LATER* (1981); Berta Esperanza Hernández-Truyol, *Building Bridges V—Cubans Without Borders: Mujeres Unidas Por Su Historia [Women United by their History]*, 55 FLA. L. REV. 225 (2003); Hernández-Truyol, *supra* note 65, at 672.

122. See *infra* notes 158, 166 and accompanying text.

123. Lois M. Smith & Alfred Padula, Book Review, 13 CUBAN STUDIES/ESTUDIOS CUBANOS 127, 128 (1983) (reviewing INGER HOLT-SEELAND, *WOMEN OF CUBA* (1982), MARGARET RANDALL, *WOMEN IN CUBA—TWENTY YEARS LATER* (1981), and *WOMEN AND THE CUBAN REVOLUTION* (Elizabeth Stone ed. 1981) (noting the commitment of state resources toward the goal of advancing women's equality); Press Release, Comm. on Elimination of Discrimination Against Women, Cuba Striving Hard to Eliminate Persistent Stereotypes, Women's Inequality, Deputy Foreign Minister Says, as Women's Committee Considers Latest Country Report (Aug. 8, 2006), available at <http://www.un.org/News/Press/docs/2006/wom1570.doc.htm> [hereinafter Press Release: Cuba Striving Hard].

care centers, laundries, state-run cafeterias, and take-out restaurants as part of an effort to socialize domestic work.<sup>124</sup>

State-run television has altered programming narratives in an effort to change depictions of socially constructed gender roles in the home.<sup>125</sup> Educators revised school texts and educational curricula to depict women as fully capable persons integrated into all levels of society.<sup>126</sup> Child development experts have introduced new children's play activities to dismantle traditional roles assigned by sex.<sup>127</sup> Cubans have increasingly accepted same-sex relationships, gay marriage, and transgendered identities while grappling with the problematic masculine discourse associated with the revolution and traditions of machismo.<sup>128</sup>

Legal reforms have also served as an expression of gender equality. Although lacking enforcement mechanisms, the 1975 Cuban Family Code required an equal division of housework and child care between husbands and wives.<sup>129</sup> The 1976 Constitution addressed women's issues (particularly the problem of the double shift), established standards for marriage as an equal partnership, and proclaimed equal political, economic, and social rights as between husbands and wives, and men and

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124. Smith & Padula, *supra* note 123, at 129; Elizabeth Stone, *Introduction*, in *WOMEN AND THE CUBAN REVOLUTION* 6, 16 (Elizabeth Stone ed., 1981).

125. Gail Reed, *The Media on Women: Caught Napping*, *CUBA UPDATE*, Summer 1991, at 15, 17 (contrasting recent television productions that have featured strong women as central characters with a popular cartoon, "The Little Pumpkin," which has typically reinforced traditional gender stereotypes but has recently made one of the primary caretaker figures male).

126. Cuba, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all Forms of Discrimination Against Women: Fourth Periodic Report of Cuba*, 116–17, U.N. Doc. CEDAW/C/CUB/4 (Sept. 27, 1999), available at <http://www.un.org/womenwatch/daw/cedaw/reports.htm> (scroll to Cuba [hereinafter CEDAW Report]).

127. *Id.* at 118.

128. ILJA A. LUCIAK, *GENDER AND DEMOCRACY IN CUBA* 31 (2007) (describing debates about changing the *machista* nature of the peasant sector); Ana Serra, *The 'New Woman' in Cuban Revolutionary Discourse: Manuel Cofiño's The Last Woman and the Next Combat* (1971), 14 *J. GENDER STUD.* 33, 34 (2005). Despite significant concerns about attitudes toward homosexuality, especially during the early 1980s when the HIV epidemic gained public attention, Cuba has demonstrated a significant improvement with regard to its position on same-sex relationships and transgendered identities. Dalia Acosta, *Gay Marriage Coming to Cuba?*, *HAVANA JOURNAL*, June 16, 2007, <http://havanajournal.com/culture/entry/gay-marriage-coming-to-cuba-2882/>.

129. CODIGO DE LA FAMILIA, Arts. 24–28, available at [http://www.informatica-juridica.com/legislacion/Cuba\\_Codigo\\_Familia.asp](http://www.informatica-juridica.com/legislacion/Cuba_Codigo_Familia.asp); Marjorie King, *Cuba's Attack on Women's Second Shift 1974–1976*, *LATIN AM. PERSP.*, Winter-Spring 1977, at 106, 108 (citing articles 24–28 of the Cuban Family Code).

women, generally.<sup>130</sup> Labor laws similarly extended rights and protections to women.<sup>131</sup> Cuba has led by example with regard to international protocols and gender-based equality. It was the first country to sign the Convention to End Discrimination Against Women (“CEDAW”)<sup>132</sup> and it subsequently signed the treaty’s optional protocol allowing individual complaints to proceed before international bodies for adjudication.<sup>133</sup>

This is not to suggest that Cuban women have achieved full equality within Cuban society.<sup>134</sup> However, efforts to integrate women into all levels of society and eliminate stereotypes through innovative and multi-institutional means have yielded significant achievements.<sup>135</sup> Women’s progress in education, employment, and health has been described as “enviable.”<sup>136</sup> The U.N. Special Rapporteur on Violence Against Women found that the Cuban revolution has “put [Cuban women] in a better position statistically than most of their Latin American counterparts,”<sup>137</sup> and the status of women in Cuba compares favorably with industrialized capitalist countries.<sup>138</sup>

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130. King, *supra* note 129, at 109–10.

131. CEDAW Report, *supra* note 126, at 75.

132. Comm. on the Elimination of Discrimination Against Women [CEDAW], *Report of the Comm. on the Elimination of Discrimination Against Women*, 198–228, delivered to the General Assembly, U.N. Doc. A/51/38 (May 9, 1996), available at <http://www.unhcr.org/refworld/type,SESSIONALREPORT,CEDAW,,3f559fa14,0.html> [hereinafter CEDAW Concluding Observations].

133. Cuba signed the CEDAW treaty in March 1980, CEDAW: States Parties, <http://www.un.org/womenwatch/daw/cedaw/states.htm> (follow link to “Ratification, Accessions and Successions”) (last visited Feb. 13, 2010), and the optional protocol in March 2000, CEDAW: Signatures to and Ratifications of the Optional Protocol, <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm> (follow link to “Ratification, Accessions and Successions”) (last visited Feb. 13, 2010).

134. María López Vigil, *Heroines of the Special Period*, in A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION 309 (Philip Brenner et al. eds., 2008); Carolina Aguilar & Rita María Pereira, *The Challenges of Daily Life*, 9 CUBA UPDATE, June 1995, at 9 (noting that many of hardships of the 1990s were borne by women).

135. CEDAW Report, *supra* note 126, at 111; Raisa Pagés, *The Status of Cuban Women: From Economically Dependent to Independent*, in A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION 311 (Philip Brenner et al. eds., 2008).

136. Hernández-Truyol, *supra* note 65, at 672–73; see also Special Rapporteur’s Report, *supra* note 70, at 10.

137. Special Rapporteur’s Report, *supra* note 70, at 10, 68.

138. Stone, *supra* note 124, at 5. The New York City Commission on the Status of Women sought the expertise of Cuban specialists on family matters, the status of women, and the best practices for institutional change. Burt Neuborne & Steven R. Shapiro, *The Nylon Curtain: America’s National Border and the Free Flow of Ideas*, 26 WM. & MARY L. REV. 719, 726 n.29 (1985).

## 2. Domestic Violence Prevention and Intervention

In Cuba, as elsewhere, the complexity of domestic violence is understood as arising from structural social relationships that include discrimination, isolation, and poverty.<sup>139</sup> The FMC anticipated that domestic violence would cease with changed material conditions.<sup>140</sup> However, with the recognition of the persistence of violence against women, that viewpoint changed and the FMC urged greater attention to the issue.<sup>141</sup> Activists argued that in order to fulfill the humanist social project, domestic violence had to be addressed not only because of its consequences for families, but because of the significance of nonviolence as a normative matter.<sup>142</sup>

### *a. Definitions and Determinants*

Cubans generally adhere to the conventional definition of domestic violence as physical, emotional, and psychological violence committed within intimate relationships.<sup>143</sup> However, social cohesion among neighbors and established norms of gender equality have influenced the way Cubans conceive of the problem, which has led to expansion of the definition beyond paradigmatic characterizations. For example, Cubans have described domestic violence as harms that occur in other types of relationships (not just between intimates). Respondents asked to identify domestic violence in a 1993 study included not only disputes between intimate couples, but also arguments between coworkers, as well as arguments between people while on shopping lines.<sup>144</sup>

Similarly, behaviors beyond the prototypical acts usually associated with gender-based violence are considered forms of domestic violence.<sup>145</sup>

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139. Characterization of Women Assaulters, *supra* note 64, at 240–41. The FMC addresses domestic violence from the point of view that the social construction of gender roles contributes to the social and political problems that Cuban women continue to face. See CEDAW Report, *supra* note 126, at 40; Caroline Bettinger-López, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19, 67 (2008) (identifying the structural nature of domestic violence).

140. LUCIAK, *supra* note 128, at 35 (describing the FMC's "triumphalist discourse").

141. *Id.* at 35–36.

142. See Characterization of Women Assaulters, *supra* note 64, at 239 (implying that non-violence is of the highest values to which Cubans must aspire in their daily lives).

143. Ángel Marqués Dolz, *Estadísticas Sin Rimel: La Cuba Patriarcal Goza De Salud*, CUBA A LA MANO, Apr. 2008, <http://cubaalamano.net/sitio/client/article.php?id=9930> (noting that domestic violence is predominantly expressed as psychological and physical violence).

144. Celeste Bermúdez Salvón & Mirta Rodríguez Calderón, *Laws and Aspects of Domestic Violence* 10 (1993) (unpublished manuscript, on file with author).

145. Edith, *infra* note 147.

In a 1995 study, women respondents identified the most common form of gender-based violence as the imbalance in workload between men and women.<sup>146</sup> Some cited the transmission of the HIV virus as a form of gender-based violence.<sup>147</sup> Others have identified “the silent treatment,” where one partner stops talking with the other, as a particularly Cuban form of intimate violence.<sup>148</sup>

There is general consensus among FMC organizers and scholars about the political and economic determinants of domestic violence.<sup>149</sup> Writing for the Center for Legal Research of the Ministry of Justice, Caridad Navarrete Calderón argues that the sources of domestic violence range from meta-systems (e.g., the U.S. embargo and its attendant deprivations and stress) to micro-systems and personal traits (e.g., socially constructed norms relating to male dominance and female submission).<sup>150</sup> A similar point of view was repeated in interviews with the U.N. Special Rapporteur on Violence Against Women, during which Cubans expressed disagreement with the U.N. focus on individual violence experienced as physical, sexual, or psychological violence. The Cubans argued instead that it was a matter of violence against women that Cuban women suffered from structural violence and economic exploitation largely as a result of U.S.-imposed economic sanctions.<sup>151</sup>

Cuban experts rank socioeconomic conditions—particularly housing shortages, unemployment, low levels of education, poor health, and consequential substance abuse—among the primary risk factors for domestic violence.<sup>152</sup> These experts point to poor communication skills and low

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146. Special Rapporteur’s Report, *supra* note 70, at 28 (citing a study in Pinar del Rio). The authors were given the same response in an interview with a male attorney and his wife from Havana on March 10, 2007.

147. See Dixie Edith, *Un Camino Contra La Violencia De Género [A Path against Gender Violence]*, Oct. 15, 2007, <http://redsemlac-cuba.net/Genero/Un-camino-contra-la-violencia-de-genero.html>.

148. Interview with professor of law of the University of Havana in Havana, Cuba (Oct. 14, 2003); Interview with nurse at health clinic in Habana Vieja, Cuba (Oct. 12–13, 2005); Interview with male attorney from Havana and his wife in Havana, Cuba (March 12, 2007); see also Sara Más, *Cuba: Ver Más Allá De Los Golpes [Cuba: See beyond the Shock]*, SEMLAC, Jan. 15, 2007, [http://www.redsemlac.net/noticias/2007/070115.htm#Cuba:\\_Ver\\_m%C3%A1s\\_all%C3%A1\\_de\\_los\\_golpes](http://www.redsemlac.net/noticias/2007/070115.htm#Cuba:_Ver_m%C3%A1s_all%C3%A1_de_los_golpes).

149. See *supra* note 143 and accompanying text.

150. Characterization of Women Assaulters, *supra* note 64, at 239–41. Meta systems also encompass socially constructed norms relating to male dominance and female submission. *Id.* at 241 (criticizing gender stereotypes of women as weak, sentimental, and suffering, and men as strong, intelligent, and powerful).

151. Special Rapporteur’s Report, *supra* note 70, at 69.

152. Characterization of Women Assaulters, *supra* note 64, at 240–41; Raquel Sierra, *Cuba: Alcohol y Violencia, Dos Males De Alto Riesgo [Alcohol and Violence: Two High-*

self-esteem as personal contributing characteristics of a secondary nature.<sup>153</sup> These explanations share the premise that the sources of domestic violence are found in the social environment of daily life, rather than in individual characteristics and behavior. They are the framework by which Cubans endeavor to prevent and respond to domestic violence.

*b. Cuban Responses to Domestic Violence*

Cubans formulate their responses to domestic violence by starting with the conviction that the political and economic determinants of such behaviors must be addressed in a manner consistent with the prevailing views about ordinary crime. First, experts and policy makers emphasize the need for research and policy initiatives to address the sources of domestic violence. Second, participatory organizations, particularly the FMC, summon their members to provide victims and perpetrators with a range of services.<sup>154</sup> The third response involves legal action to promote the first two strategies by mandating research and prevention efforts.<sup>155</sup> Legal strategies, of course, also operate within the formal criminal justice system, but these too are designed to maximize services and integrate the perpetrator into the community.

(1) Research and Policy Initiatives

Theoretical criminology has had a direct and profound influence on domestic violence responses in Cuba. The National Commission on Prevention and Social Attention (*Comisiones de Prevención y Atención Social*) (“CPAS”) was created in 1986 to study the social aspects of crime and deviance.<sup>156</sup> CPAS established a number of national multi-

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*Risk Evils*], SEMLAC, Nov. 19, 2007, [http://www.redsemlac.net/noticias/2007/071119.htm#Cuba:\\_Alcohol\\_y\\_violencia,\\_dos\\_males\\_de\\_alto\\_riesgo](http://www.redsemlac.net/noticias/2007/071119.htm#Cuba:_Alcohol_y_violencia,_dos_males_de_alto_riesgo). Some experts acknowledge that blaming domestic violence on drugs and alcohol renders invisible the key issues that relate to the imbalance of power between victim and perpetrator. See CEDAW Report, *supra* note 126, at 160; Sara Más, *Cuba: Viejas Creencias Naturalizan La Violencia [Old Beliefs Naturalize Violence]*, SEMLAC, Jan. 29, 2007, [http://www.redsemlac.net/noticias/2007/070129.htm#Cuba:\\_Viejas\\_creencias\\_naturalizan\\_la\\_violencia](http://www.redsemlac.net/noticias/2007/070129.htm#Cuba:_Viejas_creencias_naturalizan_la_violencia) (describing a study in which one-third of the respondents identified alcohol or drugs as the cause of domestic violence); Dalia Acosta & Raquel Sierra, *Cuba: Violencia: Tras la Leyenda [Cuba: Violence: Beyond the Legend]*, SEMLAC, Jul. 3, 2006, [http://www.redsemlac.net/noticias/2006/060703.htm#Cuba:\\_Violencia:\\_Tras\\_la\\_leyenda](http://www.redsemlac.net/noticias/2006/060703.htm#Cuba:_Violencia:_Tras_la_leyenda).

153. Characterization of Women Assaulters, *supra* note 64, at 241; Más, *supra* note 148.

154. Special Rapporteur’s Report, *supra* note 70, at 12, 23.

155. See *infra* Part III(2)(c).

156. THE CUBAN REVOLUTION INTO THE 1990S: CUBAN PERSPECTIVES 181 (Centro de Estudios Sobre América ed., 1992). CPAS was reauthorized in 2007. See Lourdes Pérez Navarro, *Constituida la Comisión Nacional de Prevención y Atención Social* [Constituted

disciplinary research programs and working groups, including one on domestic violence.<sup>157</sup> Much of the research currently focuses on gender norms and learned behaviors of men and women as the source of power imbalances that serve to legitimize domestic violence.<sup>158</sup>

University departments have developed domestic violence research programs and frequently collaborate with international experts.<sup>159</sup> Government offices, including the Attorney General's Office (*Oficina de Fiscalía General*), the Ministry of Public Health, and the Ministry of Justice's Center for Legal Research, have undertaken domestic violence research initiatives.<sup>160</sup> From 2002 to 2003, the Center for Psychological and Sociological Research (*Centro de Investigaciones Psicológicas y Sociológicas*) ("CIPS") undertook a lengthy study of intra-family violence, and in the process, created survey instruments and methodologies

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the National Commission of Prevention and Social Attention], GRANMA, Apr. 27, 2007, available at <http://www.granma.cubaweb.cu/2007/04/27/nacional/artic01.html>.

157. Special Rapporteur's Report, *supra* note 70, at 23 (noting the establishment in 1997 of the Working Group for the Prevention of and Attention to Interfamilial Violence); Uriarte, *supra* note 74, at 120.

158. Sara Más, *Cuba: Tradición y Estereotipos en el Camino de la Violencia* [*Cuba: Tradition and Stereotypes in the Path of Violence*], SEMLAC, Oct. 20, 2008, available at <http://www.redsemilac.net/noticias/2008/081020.htm> (citing Clotilde Proveyer Cervantes, who argues that socially constructed behaviors that teach men to be brave, act without emotions, and withhold tears, and that teach women to be maternal and caring are root causes of gender-based violence); Clotilde Proveyer Cervantes, *Los Estudios de la Violencia contra la Mujer en las Relaciones de Pareja en Cuba: Una Reflexión Crítica* [*Studies of Violence against Women in Intimate Partnerships in Cuba: A Critical Reflection*], 2 ACADEMIA 1, 4 (2002), available at <http://vsites.unb.br/ceam/nescuba/artigos/pano106.htm>.

159. Special Rapporteur's Report, *supra* note 70, at ¶ 20 (noting that the Center on Women's Studies examines domestic violence and engages with international experts). In the last 15 years, one of the Authors, Deborah Weissman, has received invitations and programs from the FMC to attend and present at various conferences examining violence against women.

160. Juana Iliana Artilles de León, *Violencia De Género: Obstáculos Para Su Prevención y Atención* [*Gender Violence: Obstacles to Prevention and Attention*], 32 SEXOLOGÍA Y SOCIEDAD 21, 21 (2006), available at [http://www.cenesex.sld.cu/webs/Violencia\\_de\\_genero\\_32.htm](http://www.cenesex.sld.cu/webs/Violencia_de_genero_32.htm); Characterization of Women Assaulters, *supra* note 64, at 236; García Cueto, *supra* note 53; C. Laura López Angulo et al., *Mujeres Maltratadas en la Relación de Pareja: Estudio de Caso desde la Dimensión Motivacional* [*Abused Women in the Partner Relationship: Case Study from the Motivational Dimension*], 28 SEXOLOGÍA Y SOCIEDAD 9, 10 (2005), available at [http://www.cenesex.sld.cu/webs/mujeres\\_maltratadas.htm](http://www.cenesex.sld.cu/webs/mujeres_maltratadas.htm); Uriarte, *supra* note 74, at 121–22 (quoting one Cuban sociologist who calls for the “need to transform the existing thinking . . . of caring for people in a fragmented way and from the perspective of only one area . . .”).

for ongoing examination of the issue.<sup>161</sup> There is a continual call for more research and better data collection across several fields of study.<sup>162</sup>

Over the past two decades, these studies have produced a new framework for approaching the gender determinants of aggression, submission, and workplace and household roles.<sup>163</sup> As noted by the U.N. Special Rapporteur on Violence Against Women (in her review of developments in Cuba), CPAS has trained Cuban officials in matters relating to gender violence since the late 1990s.<sup>164</sup> CPAS has also coordinated community organizations to conduct workshops and media campaigns to promote awareness and intervention in cases of domestic violence, with a focus on gender equality in spousal relationships.<sup>165</sup> In 2006, CIPS developed curricular programs and training sessions for parents on the prevention of violent behavior within the family, including the disruption of gender-determined power dynamics.<sup>166</sup> Government agencies treat domestic violence as a public health problem and urge families and communities to alter patterns of patriarchal culture.<sup>167</sup>

Perhaps the most striking aspect of Cuban research findings is the absence of a call for more stringent application of criminal laws. Clotilde Proveyer Cervantes, one of Cuba's most prominent experts in domestic violence, insists that legal sanctions must be the "last rung of the ladder"—that is, a last resort.<sup>168</sup> Her view is that "criminal treatment is not the solution;" rather, the answer lies in "build[ing] other models of masculinity and femininity that are not conflicting."<sup>169</sup> Her statements

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161. See generally ALBERTA DURÁN GONDAR ET AL., *CONVIVIR EN FAMILIAS SIN VIOLENCIA: UNA METODOLOGÍA PARA LA INTERVENCIÓN Y PREVENCIÓN DE LA VIOLENCIA INTRAFAMILIAR* (2005).

162. Characterization of Women Assaulters, *supra* note 64, at 254.

163. Hardy & Jiménez, *supra* note 117; Proveyer Cervantes, *supra* note 158; see also Marqués Dolz, *supra* note 143 (noting that those women who have leadership roles assume socially constructed styles reflective of masculine leadership—"women with mustaches").

164. Special Rapporteur's Report, *supra* note at 70, at 86.

165. *Id.*

166. Edith, *supra* note 147; cf. Fagan & Meares, *supra* note 50, at 196 ("In deterrence and crime control research, the structure of family life consistently ranks among the most salient forms of informal social control").

167. Artilde de León, *supra* note 160, at 24.

168. Interview by SEMlac Cuba with Dr. Clotilde Proveyer Cervantes, Professor, University of Habana (Nov. 28, 2006), *Cuba: El Silencio Nos Vuelve Cómplices* [*Cuba: Silence Renders Us Accomplices*], [http://www.mujereshoy.com/secc\\_n/3586.shtml](http://www.mujereshoy.com/secc_n/3586.shtml).

169. *Id.* Proveyer Cervantes also argues that women should be empowered to see themselves as other than victim, an outcome rendered less likely if they resort to the courts. Proveyer Cervantes, *supra* note 91, at 211.

represent the prevailing viewpoint, which is derived from theoretical developments that reflect Cuban political culture.<sup>170</sup>

## (2) Controlling Domestic Violence through Participatory Mechanisms

As a result of Cuba's political culture and the processes of the organizations described in Part II, domestic violence cases are not easily hidden from neighbors, health care professionals, or community social workers.<sup>171</sup> Concepts of a cohesive Cuban society and the moral imperative of *solidaridismo* encourage intervention in a number of ways in the household, the neighborhood, and the workplace.<sup>172</sup> Maintaining functional families is a priority in the culture of Cuban organizations.<sup>173</sup>

The FMC has established "*Casas de Orientación de Familia*" (*Family Orientation Houses*) for victims of domestic violence. Although they do not provide alternative housing for victims, the *Casas* offer counseling and services related to job training and employment.<sup>174</sup> FMC activists have also made use of the performing arts, television, and radio to publicize the idea that gender roles are contributing factors of domestic violence, and to give a public voice to the victims and public attention to their suffering.<sup>175</sup> The FMC also organizes self-help groups designed as alternatives to the formal legal system, specifically for male perpetrators.<sup>176</sup> The Center for Sex Education has also encouraged Cuban citizens to reconsider socially constructed forms of masculinity that are a risk

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170. See Edith, *supra* note 147 (quoting a prominent film-maker who, after interviewing victims of domestic violence, found that resort to the law was impractical and less important than providing families with resources).

171. Special Rapporteur's Report, *supra* note 70, at 28; Interview with physician in Habana Vieja, Cuba (Dec. 23–24, 2002).

172. Kruger, *supra* note 92, at 106; Interviews with nurse, social worker, and physician at health clinic in Habana Vieja, Cuba (Oct. 14, 2005).

173. Uriarte, *supra* note 74, at 128. Even community groups that work in areas unrelated to gender violence incorporate into their realm of responsibility the identification and management family violence problems. Interview with three sociologists and two criminologists in Havana, Cuba (Mar. 9, 2007); Interview with the University of Havana Department of Sociology, *supra* note 79.

174. Interviews with members at the Office of the Federation of Cuban Women in Havana, Cuba (Oct. 13, 2005). Members noted with concern the lack of domestic violence shelters due to Cuba's housing crisis. *Id.*; see also Special Rapporteur's Report, *supra* note 70, at ¶ 89, 91.

175. Special Rapporteur's Report, *supra* note 70, at 92.

176. Interview with three sociologists and two criminologists, *supra* note 173; Sara Más, *En Cuba, un Espacio para Crecer [In Cuba, Space to Grow]*, CIMACNOTICIAS, Nov. 16, 2006, <http://www.cimacnoticias.com/site/06111603-Violencia-quien-d.15587.0.html> (describing a self-help group's efforts to rethink domestic violence behavior, including having men who have been imprisoned use their experiences to teach other men).

factor for violence and have participated in projects to that end.<sup>177</sup> Neighbors often intervene directly with abusers;<sup>178</sup> according to one expert's estimate, they do so in at least 90% of cases involving family violence.<sup>179</sup> Furthermore, neighbors may bring perpetrators to FMC programs, and they frequently report abuse to family doctors, who rely on social workers to investigate and offer services.<sup>180</sup>

Neighbors may also involve CDR officials, or even the police, at times. However, most individuals contact authorities for the purpose of encouraging the perpetrator to enter into an informal contract whereby he agrees to obtain help and change his behavior.<sup>181</sup> Social sanctioning is not uncommon, and neighbors will keep watchful eyes on the home, particularly if they are concerned that the victim is not likely to come forth to complain.<sup>182</sup>

### *c. Legal Responses*

Formal legal responses are constitutive of the political culture of participation from which strategies of prevention and social control are derived. The very organizations and commissions that study and coordinate responses to violence were created by legislation.<sup>183</sup> For example, CPAS, which studies crime, including domestic violence, was mandated by law.<sup>184</sup> Affirmative legal obligations in the 1975 Constitution and the Family Code include gender equality as a means to address the determinants of gender violence.<sup>185</sup> The People's National Assembly Standing

177. Raquel Sierra, *El Machismo Prevaliente en Muchas Sociedades es un Factor de Riesgo para la Violencia* [The Machismo Prevalent in Many societies is a Risk Factor for Violence], Feb. 21, 2006, <http://migestion.blogia.com/2006/febrero.php>; Sara Más, *Cuba: Hombres en Tiempo de Cambio* [Men in Times of Change], SEMLAC, July 3, 2006, available at [http://www.redsemlac.net/noticias/2006/060703.htm#Cuba:\\_Hombres\\_en\\_tiempo\\_de\\_cambio](http://www.redsemlac.net/noticias/2006/060703.htm#Cuba:_Hombres_en_tiempo_de_cambio) (noting the 2004 Forum on Masculinity, Diversity and Culture of Peace).

178. Interview with attorney, Office of the Fiscalía (Attorney General) in Yaguajay, Las Villas, Cuba (Dec. 27, 2002).

179. Interview with Provincial Level Jurist in Havana, Cuba (Oct. 13, 2005).

180. Interviews with nurse, social worker, and physician, *supra* note 172.

181. Interview with attorney, Office of the Fiscalía, *supra* note 178.

182. *Id.*; Interview with Jurist, *supra* note 179.

183. Gómez Treto, *supra* note 61, at 121.

184. *Id.*; see also *supra* notes 163, 164.

185. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA, 1976, Art. 42, available at <http://www.parlamentocubano.cu/>; CODIGO DE LA FAMILIA, available at [http://www.informatica-juridica.com/legislacion/Cuba\\_Codigo\\_Familia.asp](http://www.informatica-juridica.com/legislacion/Cuba_Codigo_Familia.asp); see also Aurora Vázquez Penelas, *Preventative Social Work in Cuba: Challenges and Opportunities of Today*, in SOCIAL WORK IN CUBA AND SWEDEN 103 (Sven-Axel Månsson & Clotilde Proveyer Cervantes eds., 2005) (observing that all legislation in Cuba has a social dimension).

Committee for Children, Young People and Equal Rights for Women is obligated by legislation to counsel, evaluate, research, study, and monitor matters related to domestic violence.<sup>186</sup> Similarly, treaty obligations arising from CEDAW have inspired ongoing efforts relating to equal rights for women.<sup>187</sup>

In the last decade, Cubans have given much attention to the implementation of formal criminal laws. Cuba has no specific crime of “domestic violence,” and this has caused concern and debate. Cuban experts recognize the privileged position that criminal sanctions hold in most countries with regard to violence against women. They have been pressed by international observers to create specific provisions in the Penal Code to define and punish domestic violence.<sup>188</sup> Some Cuban experts advocate specific domestic violence legislation as well as the establishment of a Family Court with the expertise to handle such matters.<sup>189</sup>

In fact, the National Assembly has added various provisions to the Penal Code that do address violence against women.<sup>190</sup> In 1997, lawmakers amended the Code to increase punishment for trafficking in persons.<sup>191</sup> Two years later, in response to the debates about the lack of a specific domestic violence law, the National Assembly added violence between intimates as an aggravating factor to relevant code sections.<sup>192</sup> Criminologists have recommended additional legislation to address the

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186. CEDAW Report, *supra* note 126, at 41.

187. Press Release: Cuba Striving Hard, *supra* note 123 (noting that Cuba created a national action plan as follow-up to the Fourth World Conference on Women; the plan has the status of a decision of the Council of State).

188. Interviews with law professor of the University of Havana in Havana, Cuba (Dec. 23, 2002); see also Dixie Edith, *Cuba: Violencia Doméstica en la Encrucijada de la Ley* [*Cuba: Domestic Violence at the Crossroads of the Law*], Dec. 10, 2006, Nuevo Diario, <http://www.nuevodiariodesalta.com.ar/diario/suplenotas.asp?825>.

189. See Dixie Edith, *Cuba: Se Necesita Una Legislación Específica* [*Cuba: Specific Legislation is Needed*], MUJERESHOY, Mar. 19, 2007, [http://www.mujereshoy.com/secc\\_n/3649.shtml](http://www.mujereshoy.com/secc_n/3649.shtml) (noting one study where a majority of those interviewed thought that there should be a specific provision in the Penal Code related to domestic violence); Special Rapporteur's Report, *supra* note 70, ¶ 25.

190. In the past fifteen years, judges and police have received domestic violence training. See Raquel Sierra, *Cuba: Evitar El Peor Rostro De La Violencia* [*Cuba: Avoiding the Worst Face of Violence*], SEMLAC, Apr. 24, 2006, <http://www.redsemlac.net/noticias/2006/060424.htm> (describing a forensic medical project to assist domestic violence victims in the event of prosecution). Lawyers from *la Oficina Fiscalia* have scheduled presentations in community settings about the criminal legal aspect of domestic violence. Interview with attorney, Office of the Fiscalia, *supra* note 178.

191. CEDAW Report, *supra* note 126, at 49 (referencing Decree-Law No. 175, July 17, 1997).

192. Special Rapporteur's Report, *supra* note 70, at 87 (commenting on Law 87, adopted in February 1999, amending the Cuban Criminal Code).

need for self-defense-related laws for female defendants who commit crimes against their attackers.<sup>193</sup>

Moreover, although Cubans reject the paradigm of criminal legal responses, such abusive actions are not without criminal penalties in some circumstances.<sup>194</sup> However, in instances where a perpetrator is charged, prosecutors tend to view the criminal justice system as part of the “broader solidarity project,” wherein complainants are presumptively afforded credibility and respect and perpetrators are often viewed as in need of therapy and services.<sup>195</sup> Prosecutors generally attempt to avoid imposing prison sentences in secure facilities, preferring instead to use reintegrative models. These models include what Cubans refer to as work camps or open prisons without cells, where defendants take classes and meet in groups, and may be required to report progress to the judge.<sup>196</sup> They often recommend that perpetrators be diverted to workplace groups to discuss gender violence or to the programs offered by the *Casas de Orientación*.<sup>197</sup>

Certainly, some perpetrators are imprisoned.<sup>198</sup> Convictions for rape and for physical assault carry sentences commensurate to the injury.<sup>199</sup> However, prosecutors trained in matters relating to family violence indicate that there have been relatively few domestic violence prosecutions and fewer that result in imprisonment due to the preference for, and perceived success of, alternative measures.<sup>200</sup>

There is a particular idiom in Cuban criminology, one that invokes human dignity and reconcilability as premises of an approach to domestic violence.<sup>201</sup> The Cuban socialist system of justice differentiates itself from the world at large by focusing on prevention.<sup>202</sup> Domestic violence is treated as a problem reflecting cumulative social circumstances, not

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193. Characterization of Women Assaulters, *supra* note 64, at 255–56 (noting legal issues relating to women’s self-defense).

194. Special Rapporteur’s Report, *supra* note 70, at 27, 37; Interview with attorney from Cienfuegos, Havana in Havana, Cuba (Oct. 11, 2005).

195. Interview with Provincial Level Jurist, *supra* note 179; Interview with nurse, social worker, and physician, *supra* note 172.

196. The descriptions offered resembled a liberal version of work release. Interview with attorney, Office of the Fiscalía, *supra* note 178. Interviewees also noted that the judges see their role as expressing support rather than threatening punishment. *Id.*

197. *Id.*

198. Special Rapporteur’s Report, *supra* note 70, at 37. This is especially true for rape. *Id.*

199. Interview with attorney, Office of the Fiscalía, *supra* note 178.

200. *Id.*

201. Interview with Caridad Navarrete Calderón in Havana, Cuba (Oct. 16, 2003).

202. *Id.*

solely as an act of the individual who commits it.<sup>203</sup> The prevailing perception that domestic violence is caused by socioeconomic deprivation and culturally determined gender roles necessarily entails the view that individual punishment is unduly facile and often misplaced. Criminal sanctions remain subordinated to dominant approaches that rely on organizational networks whose members are well-situated to intervene in domestic violence matters.<sup>204</sup>

This approach is not only consistent with Cuban political culture; it also appears to be successful. Available data, including a Bureau of Justice report, demonstrate that rates of domestic violence are lower in Cuba than in the United States or other parts of Latin America.<sup>205</sup>

### *B. Juvenile Delinquency*

#### 1. Youth in Cuba: "If The Youth Fail, We All Fail"<sup>206</sup>

The subject of juvenile delinquency must be considered in the context of the celebrated status accorded to youth in Cuba. Their importance has been recognized by scholars from within and without (and both on and

203. See generally Dixie Edith, *Cuba: Agresión Sin Golpes [Cuba: Aggression without Blows]*, SEMLAC, Nov. 19, 2007, available at <http://www.redsemlac.net/noticias/2007/071119.htm>. One forensic medical specialist rejects considering violence not from the perspective of "quién es malo y quién bueno" (who is good and who is bad) because of the likelihood that the perpetrator was himself abused at an earlier point. *Id.*

204. Interview with Caridad Navarrete Calderón, in Havana, Cuba (Nov. 15, 2007); Proveyer Cervantes, *supra* note 168; Proveyer Cervantes, *supra* note 169; *supra* text accompanying notes 168–69.

205. In a study by the FMC, of the 25,239 individuals who sought help from one of the 185 offices throughout the country, only 1.9 percent of the cases related to intra-family violence, including abuse by parents toward children. CEDAW Report, *supra* note 126, at 164–65; see also RAY MICHALOWSKI, *WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS: CUBA* (1993) (noting that based on data for 1988, rape and domestic violence were less common in Cuba than in the United States and Latin America); Gastón A. Alzate, *Cuba, in TEEN LIFE IN LATIN AMERICA AND THE CARIBBEAN* 99, 111 (Cynthia Margarita Tompkins & Kristen Sternberg eds., 2004) (noting that rape "is almost unheard of in Cuba"); Cuba Solidarity Campaign, *Women in Cuba*, <http://www.cuba-solidarity.org.uk/faq.asp> (last visited Feb. 17, 2010) (noting low rates of physical violence against women); Anecdotal evidence also supports this view. Eileen Schnitger & Christina Romero, *Not Feminist, But Not Bad: Cuba's Surprisingly Pro-Woman Health System*, WOMEN'S HEALTH ACTIVIST (National Women's Health Network, Chico, CA), July/Aug. 2003, at 1, available at [http://www.nwhn.org/newsletter/article1.cfm?newsletterarticles\\_id=325](http://www.nwhn.org/newsletter/article1.cfm?newsletterarticles_id=325) (describing the experience of two American correspondents whose interview subjects said that sexual violence in Cuba is rare).

206. CUBANS REFLECT ON RECENT CHANGES (NEW YORK TIMES, July 19, 2008), available at <http://www.nytimes.com> (describing a slogan on a billboard in Havana).

off) the island.<sup>207</sup> Young Cubans were active in the overthrow of Batista and have since continued to participate in mass organizations and political institutions.<sup>208</sup> As one writer observed, the Cuban revolution was “made largely by and for the young people of the island.”<sup>209</sup>

Youth have benefitted from the revolution. Regional and international health and human rights institutions that measure the wellbeing of children have praised Cuba for the accomplishments of its health care system.<sup>210</sup> Cuban health measures for children are not only better on average than those of all members of the Organization for Economic Cooperation and Development (“OECD”) and world averages generally, but they also surpass those of the high human development countries and are equal to or better than those of high-income OECD nations.<sup>211</sup>

Education is the highest priority in Cuba.<sup>212</sup> Cuban leaders consider education to be the foundational public good and the basis for achieving social justice and cultural development.<sup>213</sup> The proportion of the national budget allocated for education is 13.5 percent, a significantly high figure, particularly for a small country.<sup>214</sup> International observers have praised Cuban education programs at all levels, particularly the emphasis on ear-

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207. FAGEN, *supra* note 30, at 145.

208. *Id.* Organizations such as the *Unión de Jóvenes Comunistas* (UJC), the youth communist organization with its own press, *Juventud Rebelde*, reflect ongoing efforts to incorporate young people into Cuba’s political culture. Hernández & Dilla, *supra* note 26, at 45; see also María Isabel Domínguez, *Cuban Youth: Aspirations, Social Perceptions, and Identity*, in *A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION* 292, 294–95 (Philip Brenner et al. eds., 2008). Youth participate in official governmental structures such as *Poder Popular* and the National Assembly, both of which include standing youth committees. Valdés, *supra* note 25, at 27, 38.

209. FAGEN, *supra* note 30, at 145.

210. POPULATION, HEALTH AND NUTRITION INFORMATION PROJECT, *THE STATUS OF CHILDREN AND ADOLESCENTS IN THE AMERICAS: A REGIONAL PERSPECTIVE* fig. 13, 15, 19, 29 (2000) (noting that among countries in the Americas, Cuba ranked in the highest percentile in regard to the health, nutrition, environment, and education goals established at regional summits). The United Nations Children’s Fund (UNICEF) has reported high grades for Cuba with regard to health and welfare measures for children. See Michele Frank, *Well Babies: Cuba’s National Program*, *MEDICC REV.: HEALTH & MED. NEWS OF CUBA*, June 2005, at 2, 4, available at [http://www.medicc.org/publications/medicc\\_review/0605/spotlight.html](http://www.medicc.org/publications/medicc_review/0605/spotlight.html).

211. Hernández-Truyol, *supra* note 65, at 673–74.

212. Jorge Núñez et al., *Universal Higher Education and Sustainable Social Development: The Cuban Model*, 1 *INT’L J. CUBAN STUD.* 102, 106 (2008), available at [http://www.cubastudiesjournal.org/londonmet/library/w46406\\_3.pdf](http://www.cubastudiesjournal.org/londonmet/library/w46406_3.pdf).

213. *Id.*

214. See Comm. on the Rights of the Child, *Summary Record of the 374th meeting: Cuba*, U.N. Doc. CRC/C/SR.374 (May 27, 1997), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/30f394d8dcd368e4802564c0003db7b2?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/30f394d8dcd368e4802564c0003db7b2?Opendocument).

ly childhood development.<sup>215</sup> The benefits of education have been widespread and, notwithstanding instances of persisting racial discrimination, schooling has been a significant factor in diminishing racial inequality.<sup>216</sup> Researchers describe Cuban youth as generally possessing a strong sense of national identity and a self-image that comports with political and cultural values.<sup>217</sup>

## 2. Cuban Approaches to Juvenile Delinquency

Cuba has maintained steady observation of youth development and delinquent behavior.<sup>218</sup> Preoccupation with juvenile delinquency has increased since the economic crisis of the 1990s, when the number of children on the streets rose.<sup>219</sup> The Cuban leadership, concerned with deteriorating conditions and the threat of increasing economic disparities, turned its attention to strengthening social and political bonds between youth and the state and incorporating youth as “stake-holders” in the revolutionary project.<sup>220</sup> As conditions in Cuba have changed, so too have strategies for dealing with the youth populations considered most vulnerable.<sup>221</sup> What has not changed, however, is Cuban refusal to link strategies for combating delinquency with criminal and correctional justice strategies.<sup>222</sup>

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215. Lavinia Gasperini, *The Cuban Education System: Lessons and Dilemmas*, COUNTRY STUDIES: EDUCATION REFORM AND MANAGEMENT PUBLICATION SERIES, July 2000, at 5–6, available at [http://siteresources.worldbank.org/EDUCATION/Resources/2782001099079877269/5476641099080026826/The\\_Cuban\\_education\\_system\\_lessonsEN00.pdf](http://siteresources.worldbank.org/EDUCATION/Resources/2782001099079877269/5476641099080026826/The_Cuban_education_system_lessonsEN00.pdf) (World Bank report on the achievements of Cuba’s educational system, showing Cuban third-graders’ language achievement scores to be significantly higher than those of third-graders from other Latin and Caribbean countries).

216. Alejandro de la Fuente, *Recreating Racism, Race and Discrimination in Cuba’s Special Period*, in A CONTEMPORARY CUBA READER: REINVENTING THE REVOLUTION 316, 317 (Philip Brenner et al. eds., 2008).

217. Domínguez, *supra* note 208, at 296–97.

218. Luis P. Salas, *Juvenile Delinquency in Postrevolutionary Cuba: Characteristics and Cuban Explanations*, 9 CUBAN STUDIES/ESTUDIOS CUBANOS 43, 44 (1979).

219. See Serge F. Kovaleski, *Increase in Crime Mars Cuba’s Reputation for Safe Streets*, WASH. POST, Nov. 29, 1998, at A27.

220. Cuba’s economy has shifted due to the dollarization of the economy, some privatization, and the impact of remittances. See Uriarte, *supra* note 74, at 110, 115–20.

221. *Id.* at 123.

222. Juan Mendoza Díaz, *Cuba’s Experience in the Attention of Minors with Conduct Disorder*, J. CUBAN AM. ALLIANCE, Feb. 2002, at 10, available at [http://www.redandgreen.org/Cuba/Social\\_Work/sw07-mendoza.htm](http://www.redandgreen.org/Cuba/Social_Work/sw07-mendoza.htm).

a. "Preventive Work, Not Repression"<sup>223</sup>

Preventive strategies have been the principal method of addressing the problem of juvenile delinquency, even as delinquency increased during the Special Period.<sup>224</sup> The Ministry of Social Welfare coordinates prevention efforts, working with national and regional assemblies, ministries, and mass organizations to assist in delinquency prevention efforts.<sup>225</sup> Government leaders use the state-run media to exhort citizens to help youths who exhibit troubling behavior, urging that such youths not be rejected.<sup>226</sup>

Research has been an integral facet of Cuban prevention strategies.<sup>227</sup> As early as 1960, Cuba established the Center for the Evaluation, Analysis and Guidance of Minors to study problems of juvenile crime.<sup>228</sup> In 1986, CPAS and the National Committee on Social Prevention and Child Care appointed experts to conduct research and make recommendations with regard to delinquency prevention.<sup>229</sup> Similarly, the Ministries of the Interior and Education have established research centers to collaborate on approaches to juvenile crime.<sup>230</sup>

Educators also play an important role in delinquency prevention, putting to use the values of Cuban participatory culture. Indeed, educators train volunteers to work with children in school and during after-school activities.<sup>231</sup> They emphasize humane education, affection, and nurturing.<sup>232</sup> Sex education, principles of nonviolence, and public health

223. Lutjens, *supra* note 58, at 62 (quoting Coronel Cecilia Andres, Head of the Commission for Attention to Minors).

224. *Id.*

225. *Id.* at 55, 58.

226. *Id.* at 62.

227. Interview with Calderón, *supra* note 201 (describing research as "humane and utopian" in purpose); *see also* Laura Sánchez Valdés et al., *Applied Ethics in Mental Health in Cuba: Part I—Guiding Concepts and Values*, 12 ETHICS & BEHAV. 223, 234 (2002) (noting humanism as an ethical value among professionals in the realm of psychology).

228. Gómez Treto, *supra* note 61, at 121; Mendoza Díaz, *supra* note 222.

229. Gómez Treto, *supra* note 61, at 121. The National Committee on Social Prevention and Child Care was created under the Permanent Parliamentary Commission on Youth and Child Care and Women's Rights. *See* Sonia Beretervide Dopico, *Republic of Cuba: Second Congress on Sexual Exploitation of Children*, [http://www.iin.oea.org/cuba\\_ing.pdf](http://www.iin.oea.org/cuba_ing.pdf) (last visited Feb. 17, 2010).

230. Lutjens, *supra* note 58, at 58.

231. Kirk, *supra* note 84, at 305; Gasperini, *supra* note 215, at 13 (noting mechanisms that foster community participation in schools).

232. Sara Más, *Violencia: Desterrar el Castigo [Violence: Exiling Punishment]*, SEMLAC, Apr. 13, 2006 (noting that experts oppose such methods and argue that such tactics fail to produce intellectual development).

issues (such as drug abuse) are part of the curriculum.<sup>233</sup> Teachers stress students' individual and collective responsibilities and cultivate a culture of cooperation and solidarity within their classrooms as a means to discourage criminal behavior.<sup>234</sup> Punishment and threatening techniques are eschewed as ineffective and viewed as means by which violence is replicated.<sup>235</sup>

The institutions and organizations described in Part II of this Article play the central role in delinquency prevention strategies.<sup>236</sup> The CDRs recruit retirees to provide supervision and guidance for children exhibiting troubling behavior.<sup>237</sup> Neighbors work with school personnel to identify truancy as well as its potential causes.<sup>238</sup> Local prevention commissions meet with citizens to address concerns about antisocial youth and to strategize about additional supervisory measures, including the development of recreational and sports programs.<sup>239</sup> CDR members seek solutions to the more common problems that affect children's success in school, including economic strain within families.<sup>240</sup> The *Unión de Jóvenes Comunistas* ("UJC") has engaged in a media campaign to link family violence to social violence, crime, and delinquency.<sup>241</sup>

The *Talleres* have also addressed youth delinquency in community development improvement projects. In an effort to incorporate youths into mainstream activities, workshops in the Havana neighborhood of Atares,

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233. CEDAW Report, *supra* note 126, at 128–29 (noting the incorporation of youth organizations into the National Sex Education Centre (Cenesex)); Gasperini, *supra* note 215, at 20.

234. Gwendolyn Coe & Judith Lynne McConnell, *The Children of Cuba*, YOUNG CHILDREN, Sept. 2004, available at <http://journal.naeyc.org/btj/200409/coe.pdf> (noting that arts and literature programs are a means to impart moral, social, and political values and are a regular part of day-to-day experiences for children); Gasperini, *supra* note 215, at 19; Lissette Pérez Hernández, *Social Policy Appraisal: An Urgent Matter, Specially for Children*, J. CUBAN AM. ALLIANCE, Feb. 2002, at 15, available at [http://www.redandgreen.org/Cuba/Social\\_Work/sw08-lissette.htm](http://www.redandgreen.org/Cuba/Social_Work/sw08-lissette.htm) (last visited Feb. 17, 2010).

235. See *supra* note 232.

236. Kirk, *supra* note 84, at 305 (“the onus upon rearing children, of supporting their growth, of developing an awareness of identity, was to fall upon the community as a whole”); Lutjens, *supra* note 58, at 58 (noting the various ministries and organizations that collaborate in prevention activities); Uriarte, *supra* note 107, at 100.

237. Kruger, *supra* note 92, at 108; Interview with Calderón, *supra* note 64.

238. Kruger, *supra* note 92, at 108.

239. PETER ROMAN, PEOPLE'S POWER: CUBA'S EXPERIENCE WITH REPRESENTATIVE GOVERNMENT 200 (1999).

240. Kruger, *supra* note 92, at 109 (noting that insufficient family income can make children reluctant to go to school).

241. Dixie Edith, *Palabras Que Duelen* [*Words that Hurt*], CUBA PROFUNDA, June 26, 2008, <http://cubaprofunda.org/artmeditar.php?ID=113> (describing the series in UJC's newspaper).

for example, offer disaffected youths the opportunity to participate in building restoration projects while engaging them in decision-making processes about larger community problems.<sup>242</sup> The *Casa del Niño y la Niña*, a group started by a community development workshop that is supported by various ministries and institutes, provides services for children and families to improve the quality of life of children and adolescents as part of prevention efforts.<sup>243</sup> Other organizations, such as the Martin Luther King Center and the East Havana Cultural Centers, have developed a number of youth programs. These programs include sporting events, dance troupes that incorporate hip-hop, and other recreational activities, all as a way to create constructive opportunities for youths to participate and engage in change-making activities.<sup>244</sup>

Health care providers are principal players in delinquency prevention efforts. They are integrated into the lives of families, and they regularly conduct evaluations of families' social situations for evidence of economic or psychic strain that might impact the wellbeing of children.<sup>245</sup> When signs of behavioral or substance abuse problems are noted, follow-up services to ameliorate conditions are generally provided in the realm of public health.<sup>246</sup>

These preventative approaches are based on the theory that delinquent behavior is learned and can be unlearned without stigmatizing delinquent youth.<sup>247</sup> They reflect models propounded by prominent delinquency theorists who argue that a community's ability to supervise youths through informal and supportive networks is key to controlling delin-

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242. Marie Kennedy et al., *Looking at Participatory Planning in Cuba . . . through an Art Deco Window*, 156 PROGRESSIVE PLANNING 5–6 (2003), available at [http://www.plannersnetwork.org/publications/2003\\_summer/kennedy\\_lorna\\_tilly.htm](http://www.plannersnetwork.org/publications/2003_summer/kennedy_lorna_tilly.htm); Interview with the University of Havana Department of Sociology, *supra* note 79.

243. Volunteer ESL Educators Helping Cuban Youth Learn English, <http://www.cubavolunteer.com> (last visited Feb. 17, 2009).

244. Kennedy et al., *supra* note 242, at 6; Uriarte, *supra* note 74, at 123 (describing Cuban initiatives post-Special Period to develop cultural programs for youth as part of delinquency prevention).

245. Interview with physician in Habana Vieja, Cuba (Oct. 10, 2005); Stephanie Hauge, *Primary Care in Cuba*, 23 EINSTEIN J. BIOL. MED. 37, 40–41 (2007) (describing the daily *terraros* or home visits by health care professionals).

246. Hauge, *supra* note 245, at 41; see also *Examples of Social Work Programs*, J. CUBAN AM. ALLIANCE, Feb. 2002, available at [http://www.redandgreen.org/Cuba/Social\\_work/sw06-examples.htm](http://www.redandgreen.org/Cuba/Social_work/sw06-examples.htm) (describing the program at the Community Health Center in the town of Regla, outside of Havana).

247. Salas, *supra* note 218, at 54 (describing the Cuban approach as social-psychological).

quency.<sup>248</sup> Cubans have supported these differential initiatives, which target young people for support and services in a manner consistent with Cuba's norms and values.<sup>249</sup>

*b. Socialization and Social Work: Cuba's Social Work Brigades*

Miren Uriarte has studied Cuba's response to the economic crisis of the 1990s and has observed that social work strategies are the newest initiatives by which the government has attempted to transform itself to remain effective and efficient.<sup>250</sup> Nowhere is this more apparent than Cuba's establishment of the Social Work Student Brigades, a key objective of which is to confront the problems associated with juvenile delinquency.<sup>251</sup>

Beginning in 2001, Cuba established new centers affiliated with universities across the island for three related purposes: (1) to train young people as social workers for the purpose of re-incorporating them into educational settings; (2) to provide apprenticeship opportunities with assurances of employment upon completion of a brigade program; and (3) to augment resources to address social and economic problems, particularly those that contribute to delinquency.<sup>252</sup> These centers have recruited over 100,000 unemployed youths who had not finished their education.<sup>253</sup> Youths who receive social work training—young men and women who were themselves in need of services and may be exhibiting criminal behavior—receive stipends while they engage in work-study programs.<sup>254</sup> They are eligible to attend university upon beginning their social work and are guaranteed paid work upon completing their pro-

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248. Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social-Disorganization Theory*, 94 AM. J. SOC. 774, 777–78 (1989) (describing such intervention constructs as set forth by Clifford Shaw and Henry D. McKay).

249. Uriarte, *supra* note 74, at 123.

250. *Id.* at 105; see also David Strug & Walter Teague, *New Directions in Cuban Social Work Education: What Can We Learn?*, 4 SOC. WORK TODAY 2 (2002), available at [http://www.redandgreen.org/Cuba/Cuban\\_Social\\_Work\\_Education.htm](http://www.redandgreen.org/Cuba/Cuban_Social_Work_Education.htm).

251. Uriarte, *supra* note 74, at 122–23. Cuba has also emphasized university-level programs in social work in addition to the Brigade training for youth who may not be enrolled in university programs or who are otherwise unemployed. See Strug & Teague, *supra* note 250, at 2.

252. Kapcia, *supra* note 87, at 400–01 (observing that the Brigades targeted the problem of the neglect of young Cubans to reduce discontent and a rise in juvenile delinquency); Pérez Hernández, *supra* note 234; Uriarte, *supra* note 74, at 122–23.

253. Dixie Edith, *Cuba: Jóvenes Trabajan Estudiando [Young People Work Studying]*, SEMLAC, Oct. 2007, <http://www.redsemilac.net/noticias/2007/071015.htm>.

254. *Id.*; Strug & Teague, *supra* note 250.

grams and returning to their communities.<sup>255</sup> Between 2002 and 2007, 380,000 new jobs for youths were created in education, health care, social work, computer technology, and other fields.<sup>256</sup>

Brigade students work with vulnerable populations, including other youths, the elderly, families of the incarcerated, and individuals with criminal histories.<sup>257</sup> Social work volunteers affiliated with the brigades identify minors engaged in antisocial acts and endeavor to manage their behavior through various social work strategies, including tutoring, placement in trade schools, and increased guidance and mentoring.<sup>258</sup> They work on a one-to-one basis to distribute services and otherwise create supportive environments as a means to intervene in criminal activity.<sup>259</sup> Indeed, the central focus of the brigades is delinquency prevention through nurturing instead of punishment.<sup>260</sup>

As one Cuban social worker noted, Cubans support the social work brigades as a desirable alternative to “repressive and coercive patterns in social control,” and they reject strategies based on the theory “that all social maladaptation merits punishment, or that public security necessitates the separation of the socially maladapted from the social environment.”<sup>261</sup> Social work brigades are perhaps the clearest example of a socio-educational model that provides a range of services—education, health, and cultural development services, among others—and encourages integration of troubled youth into Cuban society.<sup>262</sup> Through the processes of social interaction around community problems, the social work brigades seek to inhibit problem behavior, incorporate youths into day-to-day life, and inculcate them with norms consistent with Cuban political culture.

### *c. Legal Responses*

As noted above, Cuban policy makers have long been concerned with juvenile crime because of Cuba’s history of illiteracy, child mendicancy,

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255. Strug & Teague, *supra* note 250.

256. Edith, *supra* note 253.

257. Uriarte, *supra* note 74, at 123–24; *see also* Uriarte, *supra* note 107, at 100 (noting the role that neighborhood organizations play in preventing crime and delinquency).

258. Mendoza Díaz, *supra* note 222.

259. David Strug & Walter Teague, *Cuba’s Social Work Education Initiative, in CUBA TODAY, CONTINUITY AND CHANGE SINCE THE ‘PERIODO ESPECIAL’* 271, 273 (Mauricio A. Font ed., 2004); Uriarte, *supra* note 74, at 123.

260. Uriarte, *supra* note 74, at 123.

261. Vázquez Penelas, *supra* note 185, at 112.

262. *Id.*

exploitation of child labor, and delinquency.<sup>263</sup> Immediately upon assuming power, the Cuban government reformed the juvenile delinquency system. In 1959, the National Assembly passed laws for the purpose of reeducating and rehabilitating youths classified as delinquents.<sup>264</sup> Trained personnel were assigned to evaluate the social history and circumstances of youths facing criminal charges.<sup>265</sup> Subsequently, juvenile delinquency matters were assigned to an integrated system of care staffed by experts and linked to university research centers.<sup>266</sup>

Legal reforms have emphasized the protection of children over criminal sanctions that punish youth crime, and have mandated prevention efforts as the principal means to address juvenile delinquency.<sup>267</sup> In 1978, the National Assembly enacted the Children and Youth Code<sup>268</sup> to protect the rights of children to education, health (including physical education), and other social services.<sup>269</sup> In 1990, the Cuban government signed the Convention on the Rights of the Child<sup>270</sup> and has since sought to implement it through media campaigns, curricular instruction, public sector planning, and mass dissemination of information regarding treaty obligations.<sup>271</sup>

Cuba amended its Constitution in 1992 to codify the obligations of parents to “assist the defense of . . . [the] legitimate interests” of their

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263. Mendoza Díaz, *supra* note 222.

264. Lutjens, *supra* note 58, at 58.

265. Mendoza Díaz, *supra* note 222.

266. *Id.* (noting changes that took place from the 1960s through the 1980s).

267. Gómez Treto, *supra* note 61, at 121 (noting that CPAS, the main purpose of which is delinquency prevention, was established through legislation as part of a de-penalization process).

268. Ley No. 16 Código de la Niñez y La Juventud [Code on Children and Youth] (1978) (Cuba), available at <http://www.parlamentocubano.cu/>.

269. See ROSEMARIE SKAINE, THE CUBAN FAMILY: CUSTOM AND CHANGE IN AN ERA OF HARDSHIP 13 (2004); Pérez Hernández, *supra* note 234.

270. Convention on the Rights of the Child, *opened for Signature* Nov. 20, 1989, 14 U.N.T.S. 3.

271. *Id.* Discussions with youth revealed that students were well versed in their rights under the Convention on the Rights of the Child; billboards in Havana proclaimed the rights of children under its provisions. Interview with high school students in Havana, Cuba (Nov. 15, 2007). Implementation plans for the Convention on the Rights of the Child are published in the daily newspaper, *Granma*. Interview with Dr. Caridad Navarrete Calderón, *supra* note 64. Cuba also ratified the ILO Convention on the Abolition of Child Labor in 1975. International Labour Organization, Database of International Labor Standards, <http://www.ilo.org/ilolex/english/docs/declAM.htm> (last visited Mar. 24, 2010). Cuba has endorsed the Minimum Rules of the United Nations for the Administration of Justice to Minors (Rules of Beijing), as well as the Directives of the United Nations for the Prevention of Juvenile Delinquency (Riad Directives). Mendoza Díaz, *supra* note 222.

children and to provide for the needs of youths in order to assure their proper development and wellbeing.<sup>272</sup> More recently, Cuba amended its Criminal Code<sup>273</sup> to protect children from sexual trafficking, pornography, and corruption of minors.<sup>274</sup>

The state does, when appropriate, bring criminal charges against youths who commit crimes considered antisocial and dangerous.<sup>275</sup> The minimum age for criminal responsibility in Cuba is sixteen—same as the voting age.<sup>276</sup> Youths under sixteen may not make confessions without a parent or legal guardian present.<sup>277</sup> Unlike criminal courts in the United States, there is no juvenile division in the Cuban criminal system; however, the Cuban criminal process is different for youths than for adults.<sup>278</sup> For example, when charges are filed, a legal investigative team meets with an interdisciplinary group to examine the youth's circumstances and to determine how best to intervene in family dynamics.<sup>279</sup> Juveniles convicted between the ages sixteen and eighteen may not be imprisoned, but they may be confined to a boarding school or treatment facility.<sup>280</sup>

Cuban legal scholars have acknowledged that there are still problems with respect to the administration of juvenile justice. Although there has been progress toward eliminating racial disparities in other realms, studies commissioned by the Attorney General's office acknowledge the

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272. Sheryl L. Lutjens, *Restructuring Childhood in Cuba: The State as Family*, in CHILDREN ON THE STREETS OF THE AMERICAS: HOMELESSNESS, EDUCATION AND GLOBALIZATION IN THE UNITED STATES, BRAZIL AND CUBA 149 (Roslyn Arlin Mickelson ed., 2000).

273. Ley No. 21 Código Penal [Penal Code] (1978), available at <http://www.parlamentocubano.cu/>; Ley No. 87 Modificativa del Código Penal [Modifying the Penal Code] (1999), available at <http://www.parlamentocubano.cu/>.

274. Lutjens, *supra* note 58, at 63 (noting the 1997 enactment).

275. Mendoza Díaz, *supra* note 222. Parents can also be taken to court for failure to fulfill their legal obligations to their children; however, this strategy is also “informed by the preventive strategy.” Lutjens, *supra* note 58, at 63.

276. F.J. Raucii, *An Overview to Cuban Criminal Law and Procedure*, INT'L LEGAL J. 5 (Dec. 10, 2002), available at <http://www.gsjw.com/catalogs/catalog110/section174/file53.pdf>; MICHALOWSKI, *supra* note 205.

277. MICHALOWSKI, *supra* note 205 (noting due process protections including the right not to incriminate oneself and the prohibition against conviction based on uncorroborated confessions).

278. Interview with Dr. Caridad Navarrete Calderón, *supra* note 64; Interview with the University of Havana Department of Sociology, *supra* note 79.

279. Interview with an attorney from Cuba's *Oficina de la Fiscalía* in Havana, Cuba (Oct. 11, 2005). The attorney stated her preference for “cultural and educational approaches” over formal legal charges. *Id.*

280. Raucii, *supra* note 276, at 5; see also Mendoza Díaz, *supra* note 222 (noting that sanctions are more lenient when applied to juveniles and the “assistance centers” that might serve as placements for juvenile delinquents).

overrepresentation of black and mulatto youths in the criminal justice system.<sup>281</sup> Some have advocated additional reforms to improve the administration of juvenile justice. For example, Dr. Ramón de la Cruz Ochoa, formerly Attorney General of Cuba and President of the Judiciary Commission of the National Assembly, has recommended further decriminalization of offenses.<sup>282</sup> Other scholars have advocated increasing the minimum age for criminal responsibility to eighteen.<sup>283</sup>

Cuban legal approaches to juvenile delinquency are perhaps best summed up by the Vice-Dean of the University of Havana's law faculty. He has characterized the development of juvenile delinquency law reforms as an effort to strengthen the legal status of youths and to impose greater responsibility for their wellbeing, while limiting criminal justice intervention to "the bare minimum."<sup>284</sup> He has stressed that "the most significant characteristic of the Cuban model lies in the fact that responsibility for treatment, evaluation[,] and effectuation is outside the domain of social institutions linked to correctional centers." He has also said:

A system for the care of minors with transgressive behavior depends upon a political will aimed at the elimination of causes and conditions that create a favorable milieu for delinquency within sectors of society. Nothing is solved by adopting new laws while maintaining unscathed the bases of inequality. For today's Cuba, a main concern is the guarantee of a system that gives priority attention to youth and children while working towards the elimination of social conditions that facilitate the emergence of damaging behavior.<sup>285</sup>

Notwithstanding the need for improvement, crime (particularly juvenile crime) is again on the decline in Cuba.<sup>286</sup>

#### IV. POLITICAL CULTURE AND ORDINARY CRIME: SOME COMPARISONS BETWEEN THE UNITED STATES AND CUBA

The contrasts in the approaches to crime between Cuba and the United States are stark. For purposes of comparison, this Part describes some of the fundamental characteristics of the U.S. approach to crime (specifically, juvenile delinquency and domestic violence) and examines the weakening of U.S. social structures that relate to the formation of social capi-

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281. De la Fuente, *supra* note 216, at 318–19 (noting that the data, while scant and impressionistic, nonetheless raises these concerns).

282. Raucii, *supra* note 276, at 4 (urging shifts from a "repressive vision about crime").

283. Interview with the University of Havana Department of Sociology, *supra* note 79.

284. Mendoza Diaz, *supra* note 222.

285. *Id.*

286. Raucii, *supra* note 276, at 4 (noting an absence of gang-related crime).

tal and the impact of the demise of these structures on community crime control initiatives.

Contrasts between the United States and Cuba, however, do not tell the whole story. Progressive U.S. criminologists share many of the views of their Cuban counterparts; they agree that the sources of crime are found principally in political and economic structural relations.<sup>287</sup> A number of these theorists propound the view that community networks can function to harness norms and activate informal social controls in lieu of formal sanctions.<sup>288</sup>

These theories gave rise in the 1980s to community-based programs—often identified as Alternatives to Incarceration (“ATIs”). Many of these programs operate from the premise that there is a social context to individual behavior, and their facilitators therefore endeavor to develop relationships with families and foster community support systems.<sup>289</sup> Although ATIs share some characteristics with the Cuban approach, they have not yet delivered on their promises. This Part concludes with a review of the similarities between the two systems in order demonstrate how historical traditions and political culture both shape the success or failure of progressive crime prevention and control strategies.<sup>290</sup>

### *A. Paradigms of Modern U.S. Criminology*

#### 1. Fear and Loathing: The Carceral State

U.S. approaches to ordinary crime, including domestic violence and juvenile delinquency, must be considered in light of the overall frame-

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287. Michael Tigar notes that as between Cuba and the United States, there is much more in common than people think with regard to basic legal concepts, particularly in criminal law. Michael E. Tigar, “*Revolution in the Balance: Law and Society in Contemporary Cuba*” by Debra Evenson, CUBA update 33 (Feb. 1995) (book review).

288. Reenah L. Kim, Note, *Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Councils*, 36 HARV. C.R.-C.L. L. REV. 461, 462 (2001); Tracey L. Meares, *Norms, Legitimacy and Law Enforcement*, 79 OR. L. REV. 391, 395 (2000). These theories have ebbed and flowed; it was the civil rights movement of the 1960s that renewed debates about crime as a function of blameworthy individuals or morbid social conditions. Jane Schneider & Peter Schneider, *The Anthropology of Crime and Criminalization*, 37 ANN. REV. ANTHROPOLOGY 351, 353 (2008).

289. Weissman, *supra* note 9, at 235 (noting that during the past 30 years, most jurisdictions in the United States have incorporated ATIs as part of the criminal justice system).

290. Tim Hope, *Community Crime Prevention*, 19 CRIME & JUST. 21, 22 (1995) (noting the effect that macro-level economics may have on efforts to rely on crime prevention strategies based on the strengths of the social capital within local communities).

work of U.S. criminology. The United States can best be described as a “prescriptive state”—one that relies primarily on state penal sanctions to enforce norms of behavior.<sup>291</sup> The United States has the highest incarceration rate in the world.<sup>292</sup> There are 2.3 million people currently in prisons and jails in the United States, a 500% increase since thirty years prior.<sup>293</sup> Federal statutes have increased the numbers of crimes subject to the death penalty.<sup>294</sup> New mandatory sentencing laws in all fifty states have resulted in the incarceration of people who previously would have received noncustodial sentences of probation.<sup>295</sup> Some states have revived the chain gangs of the Reconstruction era.<sup>296</sup> Crime discourse is punctuated by analogies to war, with the criminal depicted as an enemy to be isolated and defeated.<sup>297</sup> Fear of crime has resulted in increased surveillance; people once characterized as disorderly are now viewed as potential criminals to be aggressively controlled, if not removed, from mainstream life.<sup>298</sup>

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291. Amitai Etzioni, *Law in Civil Society, Good Society, and the Prescriptive State*, 75 CHI.-KENT L. REV. 355, 359, 363 (2000) (describing the ways in which a “good society” operates to enforce its norms, in comparison to the “prescriptive state” that functions through coercion, using formal criminal laws as the mainstay of control).

292. See Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations*, N.Y. TIMES, Apr. 23, 2008, at A1

293. HEATHER C. WEST & WILLIAM J. SABOL, U.S. DEP'T OF JUSTICE, PRISON INMATES AT MIDYEAR 2008, AT TBL. 17 (2009), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=839>; Charles C. Boettcher, Comment, *Testing the Federal Death Penalty Act of 1994*, 18 U.S.C. §§ 3591–98 (1994), 29 TEX. TECH L. REV. 1043, 1057 (1998) (noting “a revolution for federal capital punishment”).

294. In 1988 Congress passed the Anti-Drug Abuse Act, which added death as a possible penalty for so-called “drug kingpins.” Pub. L. No. 100-690, 102 Stat. 4181, 4387 (codified as amended at 21 U.S.C. § 848(e)(1)(A), (B) (2000)). Congress also passed the Federal Death Penalty Act of 1994, which authorized capital punishment for more than fifty preexisting federal crimes for which the death penalty previously had not attached. Pub. L. No. 103-322, 108 Stat. 1796, 1959–70 (codified as amended in scattered sections of Title 18 of the U.S. Code).

295. See NAT'L COAL. FOR THE HOMELESS & NAT'L LAW CTR. ON HOMELESSNESS & PROVERTY, A DREAM DENIED: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2006), available at <http://www.nationalhomeless.org/publications/crimreport/report.pdf>; Randall Amster, *Patterns of Exclusion: Sanitizing Space, Criminalizing Homelessness*, 30 SOC. JUST. 195, 199–204 (2003); Elaine Wolf & Marsha Weissman, *Revising Federal Sentencing Policy: Some Consequences of Expanding Eligibility for Alternative Sanctions*, 42 CRIME & DELINQUENCY 192, 192–94 (1996).

296. Angela P. Harris, *Criminal Justice as Environmental Justice*, 1 J. GENDER RACE & JUST. 1, 5–6 (1997).

297. See *id.* at 42.

298. Harcourt, *supra* note 80, at 298, 303–04.

This has been particularly true in regard to juveniles. Although early juvenile reformers rejected the criminal justice system as a means to eradicate delinquency, policies now emphasize punishment.<sup>299</sup> Juvenile law scholars have demonstrated the ways that youths have been demonized in the United States; it makes for a stark comparison with the exalted position of Cuban youths.<sup>300</sup> Media have portrayed youths as superpredators.<sup>301</sup> Politicians decry youthful offenders as “a more malevolent breed of offender than their predecessors,” and claim that today’s youths require more stringent sanctions, notwithstanding data to the contrary.<sup>302</sup>

In the last twenty-five years, juvenile incarceration in the United States has increased by 43%.<sup>303</sup> Sentences for youths are increasingly more punitive.<sup>304</sup> At least one state has spent more on prisons than on higher education.<sup>305</sup> Despite guidelines limiting the use of pre-adjudication detention to ensure a juvenile’s appearance at trial or minimize the risk of re-offense prior to disposition, youths are frequently detained for purposes

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299. Monya M. Bunch, Comment, *Juvenile Transfer Proceedings: A Place for Restorative Justice Values*, 47 HOWARD L.J. 909, 915 (2004); see also Gordon Bazemore et al., *Boundary Changes and the Nexus between Formal and Informal Social Control: Truancy Intervention as a Case Study in Criminal Justice Expansionism*, 18 NOTRE DAME J.L. ETHICS & PUB. POL’Y 521, 523 (2004).

300. Tamar R. Birkhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443, 1488–89, 1497 (2008) (describing the specter of youth violence and moral panic about so-called dangerous criminal youth).

301. *Id.* at 1497; Joseph E. Kennedy, *Monstrous Offenders and the Search for Solidarity Through Modern Punishment*, 51 HASTINGS L.J. 829 (2000); Elizabeth S. Scott, *Adolescence and the Regulation of Youth Crime*, 79 TEMP. L. REV. 337, 351–52 (2006); Erin H. Flynn, Comment, *Dismantling the Felony-Murder Rule: Juvenile Deterrence and Retribution Post-Roper v. Simmons*, 156 U. PA. L. REV. 1049, 1059 (2008).

302. Birkhead, *supra* note 300, at 1488–89; Barbara Fedders et al., *The Defense Attorney’s Perspective on Youth Violence*, in SECURING OUR CHILDREN’S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 84, 88 (Gary S. Katzmann ed., 2002); see also Lizabeth N. De Vries, Comment, *Guilt by Association: Proposition 21’s Gang Conspiracy Law Will Increase Youth Violence in California*, 37 U.S.F. L. REV. 191, 197 n.26 (citing *Violent Youth Predator Act of 1996: Hearings on H.R. 3565 Before the H. Subcomm. on Crime*, 104th Cong.).

303. Birkhead, *supra* note 300, at 1487–88; Daniel P. Mears, *Exploring State-Level Variation in Juvenile Incarceration Rates*, 86 PRISON J. 470, 470 (2006) (noting a 43% rise during the 1990s).

304. John Muncie, *The ‘Punitive Turn’ in Juvenile Justice: Culture of Control and Rights Compliance in Western Europe and the USA*, 8 YOUTH JUST. 107, 108 (2008).

305. Harris, *supra* note 296, at 1 (describing California); Tracey L. Meares, *It’s a Question of Connections*, 31 VAL. U. L. REV. 579, 580 (1997) (observing that imposing long sentences is the most common way to treat teen and adult drug problems); John D. “Jay” Elliot, *Juvenile Justice*, in THE STATE OF CRIMINAL JUSTICE 195, 196–97 (American Bar Association ed., 2009), available at <http://www.abanet.org/crimjust/juvjust/scj.doc> (reviewing an increase in harsh and lengthy sentences for youth).

of punishment.<sup>306</sup> Schools delegate their responsibilities for problem students to the criminal justice system.<sup>307</sup> Police are now deployed to handle behaviors once addressed by school principals.<sup>308</sup> Metal detectors and video cameras have transformed spaces of education into sites of high security.<sup>309</sup> In contrast with the Cuban approach that incorporates a spirit of faith in community efforts, the “nothing works” mantra popularized in the U.S. in the 1980s moved the country toward the paradigm of incapacitation.<sup>310</sup>

An emphasis on punishment has similarly shaped the strategies and informed the values of the U.S. legal system’s response to domestic violence.<sup>311</sup> Feminist demands during the 1960s for legal parity of domestic violence with other crimes found a receptive environment in the law-and-order climate of the 1970s and 1980s.<sup>312</sup>

In fact, recent research suggests that the sources of domestic violence are complex matters that cannot be readily resolved by the criminal justice system.<sup>313</sup> These findings notwithstanding, policy makers continue to resort to law enforcement and prosecutorial strategies as the principal

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306. Patrick Webb & William Allan Kritsonis, *Controlling Those Kids: Social Control and the Use of Pretrial Detention among Youth in the United States of America: National Implications*, 3 DOCTORAL F. NAT’L J. PUBLISHING & MENTORING DOCTORAL STUDENT RES. 3 (2006), available at <http://www.nationalforum.com/Electronic%20Journal%20Volumes/Webb,%20Patrick%20Controlling%20Those%20Kids.pdf>. The use of detention has also been a function of graft and corruption. Ian Urbina & Sean D. Hamill, *Judges Plead Guilty in Payoffs for Jailing Youths for Profit*, N.Y. TIMES, Feb. 13, 2009, at A22 (describing two judges who sentenced juveniles without counsel or due process to privately owned detention centers in exchange for payment of money).

307. Bazemore, *supra* note 299, at 562–63 (criticizing the role of the criminal justice system in truancy policy, despite its success, as it limits the roles of schools and families).

308. See ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO THE JAILHOUSE TRACK 7 (2005), available at <http://www.advancementproject.org/reports/FINALEOLrep.pdf>.

309. See generally Randall Atlas, *Designing Safe Schools* (2002), [http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/1a/41/7c.pdf](http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1a/41/7c.pdf).

310. Webb & Kritsonis, *supra* note 306, at 3.

311. Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between “the Truly National and the Truly Local,”* 42 B.C. L. REV. 1081, 1113 (2001); Jeffrey Fagan & Angela Browne, *Violence Between Spouses and Intimates: Physical Aggression Between Women and Men in Intimate Relationships*, in 3 UNDERSTANDING AND PREVENTING VIOLENCE: SOCIAL INFLUENCES 115, 243 (Albert J. Reiss, Jr. & Jeffrey A. Roth eds., 1994).

312. Deborah M. Weissman, *The Personal is Political—and Economic: Rethinking Domestic Violence*, 2007 B.Y.U. L. REV. 387, 399 (2007).

313. *Id.* at 387, 399–402, 411–23 (examining the ways that structural economic dislocation, outsourcing, and plant closings have contributed to de-stabilization of households and have produced increased rates of domestic violence).

responses to domestic violence.<sup>314</sup> Domestic violence strategies are primarily focused on individual transgressors and rely on idiosyncratic explanations for abusive behaviors. Crime policies based on “[s]ituation and context-critical” theories that consider historical, social, economic, and cultural circumstances have been largely ignored.<sup>315</sup> In contrast with the Cuban approach, U.S. advocates have largely dismissed as inappropriate the efficacy of family and community systems as methods of intervention.<sup>316</sup> Policy and legislative developments have resulted in higher rates of arrest for domestic assault as compared to non-domestic assault, including an increased rate of arrest of women.<sup>317</sup>

These developments reflect a shift to “the carceral society,” characterized by an increase in disciplinary and monitoring strategies and the professionalization of punishment.<sup>318</sup> Whereas the research of Cuban criminologists is framed as “humanistic projects,” criminology in the United States operates largely within a technocratic criminal justice system embedded in what David Garland identifies as “the culture of control.”<sup>319</sup> Punishment has developed as the normative response of choice, even as it drains community resources.<sup>320</sup> The paradigm of mass incarceration has thus served to create the largest prison population in the world, a development that has gone largely unchallenged within the dominant institutions that set policy and control crime responses.<sup>321</sup> Indeed, one

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314. *Id.* at 399.

315. Fagan & Browne, *supra* note 311, 239–40 (distinguishing between criminal justice theories that are valued in a jurisprudential setting).

316. See Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 46–47 (1999) (describing various informal social and community vigilance mechanisms that exist out of the mainstream).

317. David Hirschel, et al., *Domestic Violence and Mandatory Arrest Laws: to What Extent Do They Influence Police Arrest Decisions?*, 98 J. CRIM. L. & CRIMINOLOGY 255, 259–60 (2007); Holly Maguigan, *Wading into Professor Schneider’s “Murky Middle Ground” Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U.J. GENDER SOC. POL’Y & L. 427, 442 (2003).

318. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 211–16 (1977); COHEN, *supra* note 38, at 26.

319. Weissman, *supra* note 9, at 235–36.

320. One recent study found that corrections—including prisons, jails, probation and parole services—cost \$60.3 billion for supervision of about 7 million adults and juveniles. These costs reflected an increase of 535 percent from 2001. JAMES AUSTIN & TONY FABELO, *THE DIMINISHING RETURNS OF INCREASED INCARCERATION* 8 (2004).

321. See Harcourt, *supra* note 80, at 369 (quoting Michel Foucault, who noted that the punishment paradigm has lowered the “threshold of tolerance to penalty.”); Liptak, *supra* note 292.

study found that rates of incarceration go up whether crime is decreasing or increasing.<sup>322</sup>

The increase in incarceration rates is due to a political culture that is driven more by zeal for punishment than social science data.<sup>323</sup> As Jonathan Simon has noted, “crime has become a privileged rationale and rationality for governing.”<sup>324</sup> The specter of crime often precipitates public outrage disproportionate to the actual danger posed by criminals.<sup>325</sup>

## 2. The Dissipation of Social Capital

An examination of civic participation in the United States reveals further differences between U.S. and Cuban approaches to ordinary crime. As in Cuba, the development of social capital through civic organizations, clubs, and neighborhood associations directly bears on rates of crime in the United States.<sup>326</sup> Trusting relationships between neighbors, friendship networks, and civic engagement with a wide range of groups are all factors that act to mitigate criminal behavior.<sup>327</sup> However, membership in these types of associations has declined since the early 1970s.<sup>328</sup> In his groundbreaking study, *Bowling Alone*, Robert Putnam

322. See RYAN S. KING ET AL., INCARCERATION AND CRIME: A COMPLEX RELATIONSHIP 1, 3 (2005), available at [http://www.sentencingproject.org/doc/publications/inc\\_iandc\\_complex.pdf](http://www.sentencingproject.org/doc/publications/inc_iandc_complex.pdf). The authors found that between 1984 and 1991 crime rates increased by 17%, but incarceration rates rose even more—by 65%. Between 1991 and 1998, crime rates fell by 22% but incarceration rates continued to rise—by 47%. *Id.*

323. GARLAND, *supra* note 44, at 13 (noting that researchers and experts have lost influence in helping to shape criminal policies and laws).

324. Jonathan Simon, *Guns, Crime, and Governance*, 39 HOUS. L. REV. 133, 136 (2002).

325. Jonathan Simon, *Crime, Community, and Criminal Justice*, 90 CAL. L. REV. 1415, 1416 (2002) (noting that fear of crime leads to greater demands for harsher and more punitive responses). As an example, one study notes the development of restrictive admission policies with regard to individuals with criminal records although there is no evidence that students with criminal records commit crimes on campus at a rate higher than other students. Marsha Weissman et al., *Closing the Doors to Higher Education: Another Collateral Consequence of a Criminal Conviction* 2–3 (Apr. 2008), available at <http://www.communityalternatives.org/pdf/HigherEd.pdf>.

326. See Sampson & Laub, *supra* note 82, at 140–41; *supra* note 82 and accompanying text.

327. Richard Rosenfeld et al., *Social Capital and Homicide*, 80 SOC. FORCES 283, 290, 300 (2001); Fagan & Meares, *supra* note 50, at 187 (offering examples such as PTAs and programs for adolescents).

328. DAVID HALPERN, SOCIAL CAPITAL 210 (2005). Halpern describes social organizations that have strengthened as “[s]elf help groups, cheque-book-based social movements, and religious fundamentalist groups” as well as youth volunteerism. These organizations “involve low-cost, minimal wider social contact activities.” *Id.* at 211. In contrast, “the picture for cross-cutting, multi-faceted forms of social capital is almost universally of decline.” *Id.*

describes the dramatic decrease in citizen participation in community affairs and relational networks upon which norms of reciprocity are established.<sup>329</sup> Theda Skocpol notes the shift to memberless associations that are professionally driven and managed.<sup>330</sup>

The correlation between civic disengagement and the deterioration of civil society with high rates of incarceration is well-established.<sup>331</sup> As incarceration rates increase, social capital further dissipates. Families are impacted by the imprisonment of (mostly) young men often at great distances from their homes. The negative effects of incarceration are often compounded by the social, economic, and legal stigmas associated with criminal records. These dynamics impact social cohesion and limit the capacity of communities to create associational networks. Simply stated, community residents confront reduced opportunities to build relationships and develop social capital.<sup>332</sup>

Moreover, neighborhood groups that are created for the purpose of reducing crime but that function within a criminal justice framework that favors incarceration often inhibit the development of trusting relationships.<sup>333</sup> For example, in most neighborhoods, crime watch programs serve as hotlines to the police and enlist residents to assist in criminal justice surveillance and arrest activities.<sup>334</sup> In neighborhoods already disrupted by high rates of imprisonment, such organizations are more likely to decrease the willingness of residents to intervene in crime prevention activities. To be sure, in neighborhoods where young men, especially blacks and Latinos, are disproportionately incarcerated and removed from their communities, the very legitimacy of informal social controls is undermined.<sup>335</sup>

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329. ROBERT D. PUTNAM, *BOWLING ALONE* (2000).

330. THEDA SKOCPOL, *DIMINISHED DEMOCRACY: FROM MEMBERSHIP TO MANAGEMENT IN AMERICAN CIVIC LIFE* 178 (2003).

331. See Etzioni, *supra* note 291, at 355 (describing the National Commission on Civic Renewal's "A Nation of Spectators: How Civic Disengagement Weakens America and What We Can Do about It" and the Council on Civil Society's "A Call to Civil Society: Why Democracy Needs Moral Truths"); sources cited *supra* note 327.

332. Saegert & Winkel, *supra* note 81, at 220.

333. For a comparison with Cuban community groups that work within a framework of social solidarity, see *supra* notes 96–99.

334. Harris, *supra* note 296, at 33–34 (noting that there is nothing empowering about the U.S. model of community crime control); see also *supra* notes 66, 178–82, 240 and accompanying text (contrasting these sorts of approaches in Cuba).

335. Todd R. Clear & Dina R. Rose, *When Neighbors Go To Jail: Impact on Attitudes About Form and Informal Social Control*, NAT'L INST. JUST., July 1999, available at <http://www.ncjrs.gov/pdffiles1/fs000243.pdf> (noting that effective community controls require that community members believe and have confidence in them).

The fact is that in the United States, state institutional mechanisms are more likely to be emphasized than social solidarity in crime prevention efforts. These circumstances create structural obstacles to progressive crime reform. It is within this context that progressive alternatives such as ATIs function.

### 3. ATIs: Arrested Development and Net-Widening

ATIs emerged in the 1980s in response to two factors: the alarming growth of prison populations and the promise of the effectiveness of supervision and treatment plans for criminals.<sup>336</sup> Proponents envisioned ATIs as a means to break from imprisonment as the default response to lawbreaking.<sup>337</sup> ATI programs typically include rehabilitation-oriented programming (notably drug treatment), new methods of accountability (such as restorative justice approaches and community service), and new methods of supervision (such as home confinement and electronic monitoring).<sup>338</sup>

Notwithstanding the specific goal of ATIs of avoiding the use of incarceration, they remain inexorably implicated in the dominant paradigm of the criminal justice system and function within the legal constraints of mandatory sentences.<sup>339</sup> The issue is not one of effectiveness. Recidivism rates for ATI participants are comparable or better than similarly situated incarcerated people.<sup>340</sup> However, most individuals referred to ATIs face misdemeanor or low-level felonies and are not likely candidates for incarceration in the first place.<sup>341</sup> Those who face the greatest risk of incarceration are typically considered ineligible for most ATIs.<sup>342</sup>

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336. See JOAN PETERSILIA ET AL., *Introduction, in SMART SENTENCING: THE EMERGENCE OF INTERMEDIATE SANCTIONS*, at ix–xv (James M. Byrne et al. eds., 1992); Michael Tonry & Mary Lynch, *Intermediate Sanctions*, 20 CRIME & JUST. 99 (1996).

337. FAY HONEY KNOPP ET AL., *INSTEAD OF PRISONS: A HANDBOOK FOR ABOLITIONISTS* (1976).

338. For an overview of ATI programs, see Weissman, *supra* note 9, at 237–42.

339. *Id.* at 247.

340. Jukka Savolainen, *The Impact of Felony ATI Programs on Recidivism*, N.Y. CITY CRIM. JUST. AGENCY, INC., Apr. 2003, <http://www.cjareports.org/reports/brief2.pdf>.

341. See NORVAL MORRIS & MICHAEL TONRY, *BETWEEN PRISON AND PROBATION: INTERMEDIATE PUNISHMENTS IN A RATIONAL SENTENCING SYSTEM* 224 (1990); U.S. GOV'T ACCOUNTABILITY OFFICE (GAO), *ADULT DRUG COURTS: EVIDENCE INDICATES RECIDIVISM REDUCTIONS AND MIXED RESULTS FOR OTHER OUTCOMES* 41 (2005).

342. See Thomas G. Blomberg et al., *Intermediate Punishment: Redistributing or Extending Social Control?*, 19 CRIME, LAW, & SOC. CHANGE 187 (1993); James Bonta et al., *Can Electronic Monitoring Make a Difference? An Evaluation of Three Canadian Programs*, 46 CRIME & DELINQUENCY 61, 62–63 (2000).

ATIs further depend on a broad range of social services to assist with housing, education, health care, and mental health programs, without which the very premise of their efforts is compromised. But over the past two and half decades, public support for these types of social services has decreased.<sup>343</sup> Without this support system, ATIs are unable to offer the full range of services upon which their clients depend. Drug treatment programs, for example, are in short supply, despite their promise in reducing crime and recidivism.<sup>344</sup> Moreover, as noted above, the United States has suffered a decline in social capital network opportunities of the type upon which ATIs rely to function effectively within communities.<sup>345</sup>

Despite their stated purposes, ATIs have in some instances actually contributed to increased incarceration.<sup>346</sup> Many individuals who are enrolled in ATIs face heightened scrutiny and supervision for behaviors that would otherwise not be considered law-breaking.<sup>347</sup> ATI clients are required to report to parole officers, refrain from contact with convicted felons, and remain employed or actively looking for work.<sup>348</sup> These conditions may be an appropriate exchange for avoiding imprisonment. However, imposition of custodial sentences that would have otherwise been ordered is not the only consequence for violating these requirements. ATI participants are likely to be sentenced to even harsher penalties, often without due process protections, as additional punishment for failing to succeed in their programs.<sup>349</sup>

ATIs have suffered significant setbacks in efforts to transform the dominant carceral culture. They function within a political culture that privileges the formal criminal justice system in general and incarceration in particular as a response to crime. In contrast with Cuban participatory mechanisms that promote civic responsibility for the redistribution of

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343. See HUMAN RIGHTS WATCH, *ILL-EQUIPPED AND OFFENDERS WITH MENTAL ILLNESS: U.S. PRISONS 16–17* (2003), available at <http://www.hrw.org/en/reports/2003/10/21/ill-equipped>.

344. Beth A. Colgan, *The Presidential Politics of Prisoner Reentry Reform*, 20 *FED. SENT'G REP.* 110, 117 n.120 and accompanying text (2007).

345. See Fagan & Meares, *supra* note 50, at 226.

346. Weissman, *supra* note 9, at 246–47; see also COHEN, *supra* note 38, at 44, 49.

347. COHEN, *supra* note 38, at 44 (referring to denser nets in addition to widened nets).

348. Weissman, *supra* note 9, at 246.

349. See Joan Petersilia & Susan Turner, *Intensive Probation and Parole*, 20 *CRIME & JUST.* 281, 306–07 (1996). One study demonstrated that individuals in ATIs not only spend considerable time incarcerated for their underlying crimes, but may be incarcerated for behaviors unrelated to their criminal charges, including “violating treatment expectations, administrative convenience, missing a group meeting, sassing a teacher . . . .” COHEN, *supra* note 38, at 70, 71. This is particularly true for juveniles. *Id.*

public goods, ATIs have fewer moral resources to draw upon. In a larger sense, the comparison with the Cuban approach to crime serves to underscore the need to consider political culture; otherwise—good intentions notwithstanding—it may be impossible to develop progressive crime policies.<sup>350</sup> In the end, ATIs may simply “redistribut[e] . . . penal power into a wider social space.”<sup>351</sup>

#### CONCLUSION

The Cuban revolutionary project has entered its fiftieth year—time sufficient to reflect on efforts to deploy values embedded in political culture as the normative determinants of social relationships. It is the very nature of the Cuban political culture of morality and its “place-bound source of self-identification” that offer insight into the differences in social control that set Cuba apart from the United States.<sup>352</sup> Cubans assume responsibility for crime “as an expression of a more responsible and participatory concept of life in a collectivity,” and as “an expression of a cultural pattern more sensitive to the social order.”<sup>353</sup>

David Garland describes the social control mechanisms that inform U.S. criminal justice policies as a reflection of social and economic changes of late capitalism, such as the transformation from manufacturing to service, the increase in income inequality, and other consequences of globalization and the attending insecurity and deterioration of public goods.<sup>354</sup> But Cuba, too, has undergone significant economic dislocation in the years following the collapse of the Soviet Union. It too has suffered widening inequalities as Soviet assistance and subsidized petroleum imports disappeared. But in Cuba’s appeal to political and cultural metavalues, moral purpose—having become a prominent facet of survival strategies, especially during the 1990s—has served to offset material adversity. By invoking an ethical political culture, realized through long-standing social practices of civic participation, Cubans have maintained social structures designed to inhibit conditions that give rise to crime and deviance while supporting the most vulnerable populations.

In contrast, in a society that “governs through crime,”<sup>355</sup> both poverty and crime are characterized as the results of individual choices made by

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350. Harcourt, *supra* note 80, at 373 (describing a particular approach to criminal justice based on reconcilability, love, and mutual support).

351. COHEN, *supra* note 38, at 76.

352. *See supra* note 30.

353. Hernández & Dilla, *supra* note 26, at 44.

354. GARLAND, *supra* note 44, at 3–6.

355. *See* JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR (2007).

unworthy deviants, and this in turn justifies policies that undermine the efficacy of publicly supported prevention services and encourages the use of punitive responses.<sup>356</sup> The success of progressive crime control strategies, such as ATIs, as meaningful alternatives to the carceral state, requires a fundamental political and cultural shift through which social and community relationships must be redefined and restructured. Such efforts, however, have been neither successful nor sustained.<sup>357</sup> Ultimately, changes in U.S. approaches to ordinary crime necessitate a broad change in political culture.

As the opening epigraphs to this Article suggest, the contrast in political culture between the United States and Cuba is vast. In the United States, the state freely exercises its control in the sphere of punishment but is restrained from interfering with the distribution of material goods and services, whereas the Cuban state readily intervenes in the former while encouraging informal social controls in response to crime.<sup>358</sup> For those who agree that values such as reciprocity, community, cooperation, and solidarity are essential to enlightened criminal justice policies, the Cuban approach holds promising relevance.

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356. *Id.*

357. Hope, *supra* note 290, at 23.

358. Bernard E. Harcourt, *Neoliberal Penalty: A Brief Genealogy* 2, 3 (University of Chicago Law & Economics, Olin Working Paper No. 472, 2009), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1428463](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1428463).